

A BILL

To amend title 5, United States Code, to extend the pay comparability concept to a total compensation comparability concept encompassing both pay and benefits, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the
2 United States of America in Congress assembled, That this Act may be
3 cited as the "Federal Employees Compensation Reform Act of 1979".

4 Sec. 2. Pay Systems Amendments

5 (a) Section 5301 is amended to read as follows:

6 "Sec. 5301. Definition; policy; purpose

7 "(a) Total compensation includes payments and entitlements which
8 are--

9 "(1) provided by an employer for an employee in exchange for
10 the performance of work and which cost the employer money, either
11 directly or indirectly, now or in the future;

12 "(2) of value to an employee in one or more ways, such as--

13 "(A) by adding cash to an employee's current income;

14 "(B) by creating a present value to the employee based
15 on the prospect of future receipt; or

16 "(C) by providing an employee with compensated time off;

17 "(3) typically considered compensation in the non-Federal
18 sector; and

19 "(4) measurable;

20 but does not include premium pay, with the exception of premium pay
21 under section 5545(c)(1) of this title, or, with respect to a law
22 enforcement officer, premium pay under section 5545(c)(2) of this title.

23 "(b) It is the policy of Congress that the total compensation of
24 Federal employees under this chapter and chapter 54 of this title, except employees
25 in the legislative and judicial branches under section 5307 of this

1 title and Federal employees under section 5342(a)(2)(B) and (C) of this
2 title and subchapters II and VIII of this chapter, be fixed and adjusted
3 from time to time in a manner consistent with the public interest based
4 on the principles that--

5 "(1) Federal total compensation be comparable with non-
6 Federal total compensation;

7 "(2) Federal total compensation be the same for similar
8 levels of Federal work within a designated pay area;

9 "(3) pay distinctions be maintained in keeping with work and
10 performance distinctions; and

11 "(4) total compensation for the statutory compensation systems
12 be interrelated.

13 "(c) The purpose of the Federal compensation program is to provide
14 total compensation which is adequate for recruiting, retaining, and
15 managing a well-qualified workforce.

16 "(d) For the purpose of this subchapter, 'benefit' means a payment or
17 entitlement, other than basic pay and premium pay, provided for an employee
18 by an employer, as an element of total compensation as defined under subsection (a)
19 of this section.

20 "(e) The President will determine initially and from time to time those
21 benefits which will be evaluated, compared, and included in total compensation
22 for the purpose of this subchapter.

23 "(f) For the purposes of this subchapter, 'statutory compensation
24 system' means a compensation system under--

25 CIA excluded
 "(1) subchapter III of this chapter, relating to the General

1 Schedule;

2 "(2) subchapter IV of chapter 14 of title 22, relating to
3 the Foreign Service of the United States; or

4 "(3) chapter 73 of title 38, relating to the Department of
5 Medicine and Surgery, Veterans' Administration.

6 "(g) The total compensation of each statutory compensation system
7 shall be fixed and adjusted in accordance with the principles of sub-
8 section (b) of this section and the provisions under sections 5305,
9 5306, 5308, and 5309 of this title."

10 (b) Section 5303 is repealed.

11 (c) Section 5304 is amended to read as follows:

12 "Sec. 5304. Presidential policies; regulations

13 "Subject to such policies as the President may prescribe, the
14 Office of Personnel Management and such other agencies as the President
15 may designate, shall issue regulations necessary for the administration
16 of the provisions of this subchapter."

17 (d) Section 5305 is amended--

18 (1) in the catchline by striking out "pay" and inserting in
19 lieu thereof "total compensation";

20 (2) in subsection (a) by striking out the last sentence;

21 (3) by amending subsections (a)(1)(A)-(B) to read

22 as follows:

23 "(A) compares, on the basis of appropriate surveys or
24 other measures of non-Federal pay, pay change, benefits and
25 benefits change that shall be provided by the Bureau of Labor

1 Statistics or, if unavailable from BLS, obtained by the Agent from other
2 sources as determined to be appropriate by the President--

3 "(i) the rates of pay for the General Schedule with
4 non-Federal rates of pay for similar levels of work
5 within a designated pay area; and

6 "(ii) the estimated value of Federal benefits with
7 the estimated value of non-Federal benefits;

8 "(B) makes recommendations for appropriate adjustments
9 in pay and benefits for the statutory compensation systems
10 and";

11 (4) by amending subsection (a)(2) to read as follows:

12 "(2) after considering the report of his Agent and the find-
13 ings and recommendations of the Advisory Committee on Federal
14 Compensation reported to him under section 5306(b)(3) of this
15 title, adjust the total compensation of each statutory compensation
16 system in accordance with the principles under section 5301(b) of
17 this title, effective as of the beginning of the first applicable
18 pay period commencing on or after October 1 of the applicable year,
19 by adjusting the rates of pay of each statutory compensation system
20 or by making such adjustments as he deems appropriate under section 5309
21 or by an appropriate combination of such adjustments; and";

22 (5) by amending subsection (a)(3) to read as follows:

23 "(3) transmit to Congress a report of the compensation adjust-
24 ment, specifying the percentage adjustments in the rates of pay and
25 the adjustments in benefits for employees under the General Schedule

1 and for employees under the other statutory compensation systems,
2 together with a copy of the report submitted to him by his Agent
3 and the findings and recommendations of the Advisory Committee on
4 Federal Compensation reported to him under section 5306(b)(3) of
5 this title.";

6 (6) in subsection (b)--

7 (A) by striking out "Pay Council" each time it appears
8 and inserting in lieu thereof "Compensation Council";

9 (B) by striking out "agent" and inserting in lieu
10 thereof "Compensation Agent";

11 (C) by redesignating paragraphs (1) through (4) as
12 paragraphs (3) through (6), respectively; and

13 (D) by inserting before paragraph (3) (as redesignated
14 by this section) the following:

15 "(1) define, as appropriate, the boundaries of individual
16 local pay areas for employees under the General Schedule;

17 "(2) obtain and consider the views and recommendations of the Secretary of
18 State or the Administrator of Veterans' Affairs, as appropriate, whenever
19 a systems change is contemplated which would affect a statutory compensation
20 system designated in section 5301(f)(2) or (3) of this title;"

21 (7) in subsection (b)(3) (as redesignated by this section) by
22 inserting after "represent" the following: ", in the case of labor
23 organizations, or include in their membership, in the case of other
24 organizations,"; by striking out "pay systems" and inserting in lieu thereof
25 "compensation systems"; and by inserting after "represented by" the

1 following: "or included in";

2 (8) by amending subsection (b)(4)(as redesignated by this
3 section) to read as follows:

4 "(3) provide for meetings with the Federal Employees Com-
5 pensation Council and give thorough consideration to the views and
6 recommendations of the Council and the individual views and recommendations,
7 if any, of the members of the Council regarding--

8 "(A) the types of benefits to be included in benefit surveys
9 conducted by the Bureau of Labor Statistics or, if unavailable from
10 BLS, obtained by the Agent from other sources as determined to be
11 appropriate by the President under section 5305(a)(1)(A) of this section;

12 "(B) the coverage of pay and benefit surveys for the
13 statutory compensation systems conducted by the Bureau of
14 Labor Statistics or, if unavailable from BLS, other sources as determined
15 to be appropriate by the President (including, but not limited to, the
16 occupations, establishment sizes, industries, and geographical areas
17 to be surveyed);

18 "(C) the process of comparing rates of pay of the statu-
19 tory compensation systems with non-Federal rates of pay for
20 similar levels of work within a designated pay area;

21 "(D) the adjustments in benefit provisions that should
22 be made and the relationship of the value of benefits to
23 pay adjustments for the statutory compensation systems; and

24 "(E) the adjustments in the rates of pay of the statutory
25 compensation systems that should be made to achieve compara-

1 bility between Federal total compensation and non-Federal
2 total compensation.";

3 (9) in subsection (b)(5) (as redesignated by this section) by
4 striking out "(2)(A)-(C)" and inserting in lieu thereof "(4)(A)-
5 (E)";

6 (10) by amending subsection (c)(1) to read as follows:

7 "(c)(1) If, because of national emergency or economic conditions
8 affecting the general welfare, the President should, in any year,
9 consider it inappropriate to make the total compensation adjustments
10 required by subsection (a) of this section or section 5343 of this
11 title or authorized under sections 5309 and 5394 of this title, he
12 shall prepare and transmit to Congress before September 1 of that
13 year such alternative plan with respect to total compensation
14 adjustments as he considers appropriate, together with the reasons
15 therefore, in lieu of the total compensation adjustments required
16 by subsection (a) of this section or section 5343 of this title or
17 authorized under sections 5309 and 5394 of this title. The report
18 transmitted to Congress under this subsection shall specify the
19 percentage adjustments in the rates of pay under the statutory
20 compensation systems, the Prevailing Rate Systems, and the Special
21 Occupational Services, and shall specify adjustments in benefits
22 under section 5309 of this title.";

23 (11) in subsection (c)(2) by striking out that portion of the
24 first sentence which follows "transmitted," and inserting in lieu thereof
25 "Congress adopts and the President approves a joint resolution disapproving

1 the alternative plan or, in the event the President returns the joint
2 resolution to Congress with his objections, two-thirds of each House of
3 Congress agree to pass and approve the joint resolution. Upon such a
4 joint resolution becoming law, the total compensation adjustments for the
5 statutory compensation systems, the Prevailing Rate Systems, and the
6 Special Occupational Services shall be made in accordance with
7 subsection (m) of this section.";

8 (12) in subsections (d)-(k) by inserting before "resolution"
9 and "resolutions" each time they appear the following: "joint";

10 (13) by amending subsection (l) to read as follows:

11 "(1) The rates of pay and benefit provisions which become
12 effective under this section are the rates of pay and benefit
13 provisions applicable to each position concerned, and each class of
14 positions concerned, under a statutory compensation system.";

15 (14) by amending subsection (m) to read as follows:

16 "(m) If a joint resolution disapproving an alternative plan
17 becomes law as provided in subsection (c)(2) of this section, the
18 President shall, in lieu of such alternative plan, adjust the total
19 compensation or, if the benefit adjustment has been disapproved as provided
20 by section 5309(d)(1) of this title, the rates of pay of the statutory
21 compensation systems, by appropriate amounts reflecting the changes
22 that have occurred in non-Federal compensation for the various
23 levels of work during the twelve-month period preceding the most
24 recent national survey or other measure of non-Federal compensation described
25 in subsection (a)(1)(A) of this section, as such changes have been

1 measured under that subsection. Such adjustments shall be effective
2 as of the beginning of the first applicable pay period beginning
3 either on or after the date on which the joint resolution becomes
4 law, or on or after October 1, whichever is later. Total compensation
5 adjustments for the Prevailing Rate Systems, and the Special Occupational
6 Services shall be made in amounts and at times determined to be
7 appropriate to provide equitable treatment in relation to the
8 treatment afforded the statutory compensation systems under the
9 first sentence of this subsection.";

10 (15) in subsection (n) by inserting after "rates of pay" the
11 following: "or benefit provisions";

12 (16) in subsection (n)(1) by striking out "increases" and
13 inserting in lieu thereof "adjustments"; and

14 (17) in subsection (o) by inserting after "section" the
15 following: "and benefit provisions under section 5309 of this
16 title".

17 (e) Section 5306 is amended--

18 (1) in the catchline by striking out "Pay" and inserting in
19 lieu thereof "Compensation";

20 (2) in subsection 5306(a) by striking out "Pay" and inserting
21 in lieu thereof "Compensation";

22 (3) in subsection 5306(b)(1) by striking out "agent" and
23 inserting in lieu thereof "Compensation Agent"; and

24 (4) in subsection 5306(b)(2) by adding "and benefit" after
25 "pay" and by striking out "agent" wherever it appears and inserting

1 in lieu thereof "Compensation Agent".

2 (f) Subchapter I of chapter 53 is amended by adding at the end
3 thereof the following new section:

4 "Sec. 5309. Adjustment of benefits; effect on pay-fixing authorities

5 "(a) Notwithstanding any other provision of law, in order to carry
6 out the policy and purpose stated in section 5301 of this title, the
7 President may establish new employee benefit and modify or
8 discontinue existing employee benefit provisions, except those relating
9 to retirement benefits, including, but not limited to, provisions relating
10 to the types and amounts of benefits and the contributions for benefits.

11 Presidential actions under this subsection are applicable to Federal
12 employees paid under the statutory compensation systems, the merit pay
13 system, the Senior Executive Service, the Executive Schedule and Special
14 Occupational Services, or defined in section 5342(a)(2)(A) of this
15 title, and executive branch employees paid under section 5307 of this
16 title. Except for employees covered under section 5305(a)(2) of this
17 title, the President shall prescribe the effective dates of the adjustments
18 for individuals who are covered by a benefit adjusted under this section.

19 "(b) Adjustments under this section shall be based on the evaluation
20 and comparison of benefits included in total compensation under section 5301(e)
21 and on data provided by the Bureau of Labor Statistics or, if unavailable from
22 BLS, obtained from other sources as determined to be appropriate by the
23 President under section 5305(a)(1)(A).

24 "(c) Actuarial and economic assumptions used in benefit evaluations
25 shall conform with assumptions made under subpart C of part II of

1 title I of the Budget and Accounting Procedures Act of 1950, as amended.

2 "(d)(1) The President shall transmit to each House of Congress before
3 September 1 of any appropriate year a report which discusses proposed adjustments
4 under this section. Any such adjustment becomes effective as of the first appli-
5 cable pay period commencing on or after October 1 of the applicable year for
6 employees covered by section 5305(a)(2) of this title, or as of such date or
7 dates as the President may prescribe for other employees covered by this section
8 unless, before the end of the first period of 30 calendar days of continuous
9 session of Congress after the date on which the report is transmitted, Congress
10 adopts and the President approves a joint resolution disapproving the proposed
11 adjustment or, if the President returns the joint resolution to Congress with
12 his objections, two-thirds of each House of Congress agree to pass and approve
13 the joint resolution, in which case, except as provided by paragraphs (2) or (3)
14 of this subsection, adjustment of the total compensation of each statutory
15 compensation system shall be accomplished by adjusting the rates of pay of each
16 such system by an amount necessary to achieve total compensation comparability
17 and shall be made effective as provided by section 5305(a)(2) of this title.

18 The continuity of a session is broken only by an adjournment of the Congress
19 sine die, and the days on which either House is not in session because of an
20 adjournment of more than 3 days to a day certain are excluded in the computation
21 of the 30-day period.

22 "(2) If an alternative plan submitted under section 5305(c)(1) of
23 this title is subsequently disapproved as provided by section 5305(c)(2)
24 of this title, each adjustment under this section shall be made effective
25 as provided by section 5305(m) of this title.

1 "(3) If an alternative plan submitted under section 5305(c)(1) of this
2 title is not subsequently disapproved, the adjustment of the total compensation
3 of each statutory compensation system shall be accomplished by adjusting the
4 rates of pay of each such system by an amount equivalent to the adjustment in
5 total compensation specified in the alternative plan and shall be made effective
6 as provided by section 5305(c)(2) of this title.

7 "(e) Subsections (f)-(1) of this section are enacted by Congress--

8 "(1) as an exercise of the rulemaking power of the Senate and
9 the House of Representatives, respectively, and as such they are
10 deemed a part of the rules of each House, respectively, but applicable
11 only with respect to the procedure to be followed in the House in
12 the case of joint resolutions described by this section; and they
13 supersede other rules only to the extent that they are inconsistent
14 therewith; and

15 "(2) with full recognition of the constitutional right of
16 either House to change the rules (so far as relating to the procedure
17 of that House) at any time, in the same manner, and to the same
18 extent as in the case of any other rule of that House.

19 "(f) If the committee, to which has been referred a joint resolution
20 disapproving the benefit adjustments proposed by the President, has not reported
21 the joint resolution at the end of 10 calendar days after its introduction, it
22 is in order to move either to discharge the committee from further consideration
23 of the joint resolution or to discharge the committee from further consideration
24 of any other joint resolution with respect to the same benefit adjustments which
25 has been referred to the committee.

1 "(g) A motion to discharge may be made only by an individual
2 favoring the joint resolution, is highly privileged (except that it may
3 not be made after the committee has reported a joint resolution with
4 respect to the same recommendation), and debate thereon is limited to
5 not more than 1 hour, to be divided equally between those favoring and
6 those opposing the joint resolution. An amendment to the motion is not
7 in order, and it is not in order to move to reconsider the vote by which
8 the motion is agreed to or disagreed to.

9 "(h) If the motion to discharge is agreed to, or disagreed to, the
10 motion may not be renewed, nor may another motion to discharge the
11 committee be made with respect to any other joint resolution with respect
12 to the same benefit adjustments.

13 "(i) When the committee has reported, or has been discharged from
14 further consideration of, a joint resolution with respect to benefit
15 adjustments, it is at any time thereafter in order (even though a previous
16 motion to the same effect has been disagreed to) to move to proceed to
17 the consideration of the joint resolution. The motion is highly privileged
18 and is not debatable. An amendment to the motion is not in order, and
19 it is not in order to move to reconsider the vote by which the motion is
20 agreed to or disagreed to.

21 "(j) Debate on the joint resolution is limited to not more than 2
22 hours, to be divided equally between those favoring and those opposing
23 the joint resolution. A motion further to limit debate is not debatable.
24 An amendment to, or motion to recommit, the joint resolution is not in
25 order, and it is not in order to move to reconsider the vote by which

1 the joint resolution is agreed to or disagreed to.

2 "(k) Motions to postpone, made with respect to the discharge from
3 committee, or the consideration of, a joint resolution with respect to
4 benefit adjustments, and motions to proceed to the consideration of
5 other business, are decided without debate.

6 "(l) Appeals from the decisions of the Chair relating to the
7 application of the rules of the Senate or the House of Representatives,
8 as the case may be, to the procedure relating to a joint resolution with
9 respect to benefit adjustments are decided without debate.

10 "(m) The adjustment that takes effect under this section shall
11 modify, supersede, or render inapplicable, as the case may be, to the
12 extent inconsistent therewith--

13 "(1) pertinent provisions of relevant benefit laws enacted
14 prior to the effective date or dates of all or part (as the case
15 may be) of the adjustment; and

16 "(2) any prior recommendations or adjustments which took
17 effect under this section or prior provisions of law.

18 "(n) The adjustment that takes effect under this section shall be
19 printed in the Federal Register and the Code of Federal Regulations.

20 "(o) Any adjustment shall be initially made, effective on the
21 effective date of the adjustment, under conversion rules prescribed by
22 the President or by such agencies as the President may designate.

23 "(p) Notwithstanding any other provision of law, the President
24 shall direct any other pay-fixing authority for employees whose total
25 compensation is fixed and adjusted under this chapter to take into

1 account the difference in Federal and non-Federal benefit values in
2 making appropriate pay adjustments.".

3 (g) Section 5332(a) is amended to read as follows:

4 "(a) The General Schedule, the symbol for which is GS, is the basic
5 pay schedule from which local pay area schedules are derived for positions
6 to which this subchapter applies. The head of each agency having General
7 Schedule employees in a local pay area, as defined under section 5305(b)(1)
8 of this title, shall apply to each such employee, except an employee
9 covered by the merit pay system established under section 5402 of this
10 title, the pay schedule established by the President for General Schedule
11 employees in that local pay area and such pay shall be considered basic
12 pay in accordance with the General Schedule.".

13 (h) Section 5333 is amended to read as follows:

14 "Sec. 5333. Minimum rate for new appointments; higher rates for supervisors
15 of employees paid under other systems

16 "(a) New appointments shall be at the minimum rate of the appropriate
17 grade.

18 "(b) Under regulations prescribed by the Office of Personnel
19 Management, an employee in a position to which this subchapter applies,
20 who regularly has responsibility for supervision (including supervision
21 over technical aspects of the work concerned) over employees who are
22 under a different pay system may be paid an amount greater than the
23 highest rate of basic pay of any such employee regularly under his/her
24 supervision, even if such amount is greater than the highest amount of
25 the supervisors grade. This pay adjustment shall be reduced or withdrawn

1 when conditions warrant, as specified in regulations prescribed by the
2 Office of Personnel Management."

3 (i) Section 5334 is amended--

4 (1) by amending subsection (b) to read as follows:

5 "(b)(1) An employee who is promoted or transferred to a
6 position in a higher grade is entitled to basic pay at the lowest
7 rate of the higher grade which exceeds his/her existing rate of
8 basic pay by not less than two step increases of the grade from
9 which he/she is promoted or transferred.

10 "(2) If, in the case of an employee so promoted or transferred
11 who is receiving basic pay at a rate in excess of the maximum rate
12 of his/her grade, there is no rate in the higher grade which is at
13 least two step increases above his/her existing rate of basic pay,
14 he/she is entitled to--

15 "(A) the maximum rate of the higher grade; or

16 "(B) his/her existing rate of basic pay, if that rate is
17 the higher.

18 "(3) If an employee so promoted or transferred is receiving
19 basic pay at a rate saved to him/her under subchapter VI of this
20 chapter on grade and pay retention, he/she is entitled to--

21 "(A) basic pay at the lowest rate of the higher grade
22 which exceeds the retained rate by not less than two step-
23 increases of the grade from which promoted, if the employee is
24 receiving a retained rate under section 5362 of this chapter;

25 "(B) basic pay at the lowest rate of the higher grade

1 which exceeds the maximum rate of the lower grade by not less
2 than two step-increases of the lower grade, if the employee is
3 receiving a retained rate under section 5363 of this chapter;
4 or

5 "(C) the retained rate of pay, if that rate is higher.

6 "(4) Notwithstanding the provisions of this subsection, the
7 Office of Personnel Management may prescribe regulations to ensure
8 that upon repromotion of an employee to a formerly-held grade, the
9 scheduled rate of pay is set at the lowest rate which equals or
10 exceeds the rate he/she would have attained had he/she remained in
11 that grade, or at the highest previous rate, whichever is higher.";
12 and

13 (2) by adding at the end thereof the following new subsection--

14 "(g) For purposes of this section, "rate of basic pay"
15 means the rate of pay fixed by law or administrative action
16 for the position held by the employee before any deductions
17 and exclusive of additional pay of any kind. This exclusion
18 of additional pay applies to overtime, Sunday, and holiday
19 pay; night differential; unusually severe working conditions or
20 hazard differential; remote work site allowance; identifiable
21 cost of living allowance; recruitment and retention allowance;
22 or any other premium pay, differential, allowance, or add-on
23 of any kind."

24 (j) Section 5335 is amended--

25 (1) by striking out "permanent" in subsection (a); and

1 (2) by striking out subsection (d) and inserting in lieu
2 thereof the following:

3 "(d) The following are not equivalent increases in pay
4 within the meaning of subsection (a) of this section:

5 "(1) an increase in pay granted by statute.

6 "(2) such other increases in pay as the Office may
7 determine should not be considered equivalent increases."

8 (k) Section 5341 is amended--

9 (1) in paragraph (3) by striking out "; and" and inserting in
10 lieu thereof "for prevailing rate employees as defined under
11 section 5342(a)(2)(B) and (C)";

12 (2) in paragraph (4) by striking out "rates of pay" and
13 inserting in lieu thereof "total compensation", and at the end
14 thereof by striking out the period and inserting in lieu thereof ";
15 and"; and

16 (3) by adding at the end thereof the following new paragraph:

17 "(5) total compensation for prevailing rate employees as
18 defined under section 5342(a)(2)(A) of this title will be
19 fixed and adjusted in accordance with the principles in
20 section 5301 of this title."

21 (1) Section 5343 is amended--

22 (1) in subsection (a) by striking out "The pay" and inserting
23 in lieu thereof "Subject to paragraph (3) of this subsection, the
24 pay"; and

25 (2) in subsection (a)(3) by striking out the semicolon and

1 inserting in lieu thereof ", except that, for prevailing rate
2 employees as defined under section 5342(a)(2)(A) of this title, a
3 lead agency in establishing and adjusting the wage schedules and
4 rates shall take into account the difference in Federal and non-
5 Federal benefit values in making those adjustments, as directed by
6 the President pursuant to section 5309(p) of this title;".

7 (m) Section 5347(e) is amended by striking the first sentence and
8 inserting in lieu thereof "The Committee shall study the prevailing rate
9 system and other matters pertinent to the establishment of prevailing
10 rates under this subchapter and the benefit provisions adjusted under
11 section 5309 of this title for employees as defined under section 5342(a)(2)(A)
12 of this title, and shall, from time to time, advise the Office of Personnel
13 Management thereon."

14 (n) Section 5363(a)(2) is repealed.

15 (o) Chapter 53 is amended by inserting after section 5375 the
16 following new section:

17 "Sec. 5376. Special project employees

18 "(a) For the purpose of this section--

19 "(1) 'agency' has the meaning given to it by section 5102(a)
20 of this title; and

21 "(2) 'special project employee' means an employee who is
22 employed under an economic or educational opportunity program and
23 who is designated as such by the head of an agency in accordance
24 with regulations prescribed by the Office of Personnel Management.

25 "(b) The head of each agency shall pay special project employees

excludes CIA

1 at rates, or within limits, prescribed by that Office."

2 (p) Chapter 53 is amended by adding at the end thereof the following
3 new subchapter:

4 "SUBCHAPTER IX--SPECIAL OCCUPATIONAL SERVICES

5 "Sec. 5391. Definitions

6 "(a) For the purpose of this subchapter, 'agency', 'employee',
7 'position', 'class', and 'grade' have the meanings given them by section
8 5102 of this title. *CIA excluded*

9 "(b) 'Pay level' means the applicable rate or range of rates of
10 basic pay from which an employee is paid when the use of 'class' or
11 'grade' is not appropriate.

12 "Sec. 5392. Special Occupational Services

13 "(a) It is the purpose of this subchapter to authorize the Office
14 of Personnel Management in consultation with the Office of Management and
15 Budget to establish, in accordance with the principles in section 5301
16 of this title, Special Occupational Services which will include all
17 positions in specific occupations or groups of occupations for which the
18 Office has determined the Government would be significantly handicapped
19 in recruiting a well-qualified workforce or in directing the efficient internal
20 management of that workforce if the positions in those specific occupations
21 or groups of occupations were included under the General Schedule.
22 These determinations shall be based on such factors as--

23 "(1) significantly higher total compensation prevailing in the
24 non-Federal sector for comparable work levels in the specific
25 occupations or groups of occupations than would be paid by the

1 Government if the occupations or groups of occupations were included
2 under the General Schedule; or

3 "(2) significantly different methods of determining job value
4 in the occupations or groups of occupations prevailing in the non-
5 Federal sector which make it difficult or impractical to make
6 comparisons of grade and compensation levels between Federal and
7 non-Federal positions;

8 when such factors are demonstrably related to recruitment or efficient internal
9 management of a well-qualified workforce.

10 "(b) The Office in consultation with the Office of Management and Budget
11 shall abolish a Special Occupational Service and place its positions
12 under the General Schedule when the conditions which require its continuance
13 no longer exist.

14 "(c) The Office in consultation with the Office of Management and Budget
15 may combine or modify Special Occupational Services, as appropriate.

16 "(d) In carrying out its function under this section, the Office
17 shall consult with representatives of employee organizations which
18 represent, in the case of labor organizations, or include in their
19 membership, in the case of other organizations, substantial numbers of
20 employees in positions in the occupations or groups of occupations to be
21 included in the Special Occupational Service, to consider their views
22 and recommendations regarding the establishment, modification or abolishment
23 of such Service and such other matters as considered to be appropriate
24 by the Office.

25 "Sec. 5393. Job evaluation or alignment plans

1 "(a) Notwithstanding the provisions of chapter 51 of title 5, United
2 States Code, the Office of Personnel Management may establish job
3 evaluation or alignment plans as appropriate for each Special Occupational
4 Service.

5 "(b) The job evaluation or alignment plans may be based on a
6 position classification system, in the same manner as the General
7 Schedule, or may be based on other methods as determined to be appropriate
8 by the Office.

9 "Sec. 5394. Compensation plan

10 "(a) The total compensation for each of the Special Occupational
11 Services shall be--

12 "(1) fixed and from time to time adjusted consistent with the
13 public interest; and

14 "(2) maintained generally in line with pay rates within
15 appropriate local or national pay areas for non-Federal work requiring
16 similar levels of skills and abilities taking into account the
17 difference in Federal and non-Federal benefit values in making
18 those adjustments, as directed by the President pursuant to section
19 5309(p) of this title.

20 "(b) The Office of Personnel Management shall establish, administer,
21 and abolish the pay-setting procedures for each of the Special Occupational
22 Services in accordance with the purposes and policies in section 5301 of
23 this title. These procedures shall provide for--

24 "(1) definition of the boundaries of the pay area or areas
25 determined by the Office to be appropriate for pay rate determination;

1 "(2) collection, analysis, and use of data which shall be
2 provided by the Bureau of Labor Statistics or other source as
3 determined to be appropriate by the Office:

4 "(3) such participation by agencies as the Office considers
5 appropriate;

6 "(4) periodic review of the pay rates for each of the schedules
7 established under section 5392 of this title to ensure continued
8 adherence to the purposes and policies established in section 5301
9 of this title; and

10 "(5) taking into account the difference in Federal and non-
11 Federal benefit values in making those adjustments, as directed by
12 the President pursuant to section 5309(p) of this title.

13 "(c) The Office shall initially establish and thereafter adjust or
14 abolish, in accordance with the provisions of this section, a pay
15 schedule or schedules for each of the Special Occupational Services, the
16 designations for which shall be determined by the Office.

17 "(d) Each employee determined to be included in one of the Special
18 Occupational Services shall be paid under the appropriate schedule in
19 accordance with the provisions of this subchapter.

20 "(e) Each agency shall identify those employees under its jurisdiction
21 covered by each Special Occupational Service and shall place each such
22 employee in the appropriate grade or pay level in conformance with
23 standards or other instructions published by the Office of Personnel
24 Management. When facts warrant, an agency may change an employee whom
25 it has placed in a grade or pay level under this section from that grade

1 or pay level to another grade or pay level. Subject to subchapter VI of
2 chapter 53 of this title, these actions of an agency are the basis for
3 pay and personnel transactions until changed by certificate of the
4 Office of Personnel Management.

5 "(f) For each Special Occupational Service, the Office shall pres-
6 cribe policies for fixing the rates to be paid employees upon appointment,
7 transfer, change of grade or pay level, or other personnel action and,
8 as appropriate, conditions under which employees shall advance through
9 the range of each grade or pay level.

10 "(g) For each Special Occupational Service, the Office shall---

11 "(1) determine the applicability of premium pay, such as
12 overtime pay (or compensatory time off in lieu thereof), Sunday
13 pay, holiday pay, standby or on-call pay, hazardous duty pay, or
14 night differential pay;

15 "(2) prescribe the conditions under which payments of such
16 premium pay shall be made; and

17 "(3) prescribe the rates of such payments.

18 "Sec. 5395. Annual report

19 "The Office of Personnel Management shall make an annual report on
20 the operation of the Special Occupational Services established under
21 this subchapter to the President for transmittal to the Congress.

22 "Sec. 5396. Regulations

23 "The Office of Personnel Management shall prescribe regulations to
24 carry out the purpose of this subchapter."

25 (q) The analysis of chapter 53 is amended--

1 (1) in the chapter title by striking out "PAY RATES AND
2 SYSTEMS" and inserting in lieu thereof "FEDERAL COMPENSATION
3 PROGRAM";

4 (2) in the heading for subchapter I by striking out "PAY
5 COMPARABILITY SYSTEM" and inserting in lieu thereof "TOTAL
6 COMPENSATION COMPARABILITY SYSTEM";

7 (3) by striking out item "5301. Policy." and inserting in
8 lieu thereof "5301. Definition; policy; purpose.";

9 (4) in item 5304 by striking out "and" and inserting in
10 lieu thereof ";;";

11 (5) in item 5305 by striking out "pay" and inserting in lieu
12 thereof "compensation";

13 (6) in item 5306 by striking out "Pay" and inserting in lieu
14 thereof "Compensation";

15 (7) by inserting after the item relating to section 5308 the
16 following new item: "5309. Adjustment of benefits; effect on pay-
17 fixing authorities.";

18 (8) by inserting after the item relating to section 5375 the
19 following new item: "5376. Special project employees."; and

20 (9) by adding at the end thereof the following new item:

21 "SUBCHAPTER IX--SPECIAL OCCUPATIONAL SERVICES

22 "5391. Definitions.

23 "5392. Special Occupational Services.

24 "5393. Job evaluation or alignment plans.

25 "5394. Compensation plan.

1 "5395. Annual report.

2 "5396. Regulations."

3 Sec. 3. Prevailing Rate Systems Amendments

4 (a) Section 5343 is amended--

5 (1) in subsection (a)(3) by striking out "(d)" and inserting
6 in lieu thereof "(5)";

7 (2) by amending subsection (b) to read as follows:

8 "(b) The Office of Personnel Management shall establish
9 an annual schedule of wage surveys, except that a full-scale
10 wage survey shall be conducted in each wage area at least
11 every third year.";

12 (3) in subsection (c)(1) by striking out "subject to subsection (d)
13 of this section," and by striking out "private" each
14 place it appears and inserting in lieu thereof "non-Federal";

15 (4) in subsection (c) by redesignating paragraphs (5) and (6)
16 as paragraphs (6) and (7) respectively;

17 (5) by inserting after subsection (c)(4) the following new
18 paragraph:

19 "(5) for requirements for the development of proper differ-
20 entials for work performed at night, provided that the differentials
21 under this paragraph shall be part of basic pay;" and

22 (6) by repealing subsections (d), (e), and (f).

23 (b) No employee, as defined by section 5342(a)(2) of title 5, United
24 States Code, will lose pay as a result of the initial application of any
25 provision of this Act.

1 (c) The changes made by this Act with respect to an affected
2 employee shall not act to reduce to below 3 percent the amount of such
3 employee's wage adjustment pursuant to the first full-scale wage survey
4 ordered on or after October 1, 1979. Thereafter, an employee whose rate
5 of basic pay has been retained under subsection (b) shall receive one-
6 half of each wage schedule adjustment applicable to the maximum rate of
7 his/her grade so long as he/she (1) continues in the same agency without
8 a break in service of one workday or more; (2) is not entitled to a
9 higher scheduled rate of pay by operation of the Federal Wage System;
10 and (3) is not demoted or reassigned (A) for personal cause, or (B) at
11 his/her request..

12 (d) The Office of Personnel Management shall prescribe such regula-
13 tions as may be necessary to carry out the provisions of this section.

14 Sec. 4. Premium Pay and Allowances Amendments

15 (a) Section 4109(a)(1) of this title is amended to read as follows:

16 "(1) pay all or part of the pay of an employee of the agency
17 for a period of training under this chapter, except that overtime,
18 holiday, or night differential pay may be paid to an employee for
19 a period of training only under the following conditions: "

20 "(A) the employee is a nonexempt employee as defined in
21 section 5541 of this title;

22 "(B) the period of training is by, in, or through a
23 Government facility; and

24 "(C) the employee's attendance is directed by the Agency;
25 and".

1 (b) Section 5541 is amended--

2 (1) in paragraph (2)--

3 (A) at the end of subparagraph (B) by striking out
4 "and";

5 (B) after subparagraph (C) by inserting the following
6 new subparagraphs:

7 "(D) a prevailing rate employee in or under the
8 Office of the Architect of the Capitol who is paid on a
9 daily or hourly basis and who is not subject to chapter 51
10 of this title; and

11 "(E) a prevailing rate employee as defined by
12 section 5342(a)(2)(B) of this title;";

13 (C) by repealing subparagraph (xi);

14 (D) at the end of subparagraph (xv) by striking out

15 "or";

16 (E) at the end of subparagraph (xvi) by striking out the
17 period and inserting in lieu thereof a semicolon; and

18 (F) after subparagraph (xvi) by inserting the following
19 new subparagraphs:

20 "(xvii) an employee whose pay is fixed and adjusted under
21 subchapter IX of chapter 53 of this title; or

22 "(xviii) a special project employee as defined by section 5376
23 of this title."; and

24 (2) after paragraph (2) by inserting the following new
25 paragraphs:

1 "(3) an 'exempt employee' is an employee who is not subject
2 to the overtime pay provisions of section 7 of the Fair Labor
3 Standards Act of 1938, as amended;

4 "(4) a 'nonexempt employee' is an employee who is subject
5 to the overtime pay provisions of section 7 of the Fair Labor
6 Standards Act of 1938, as amended;

7 "(5) 'hours of work' includes, but is not limited to, all
8 hours during which an employee is suffered or permitted to work and
9 all hours during which an employee is authorized to be absent from
10 duty with pay;

11 "(6) 'hourly regular rate of pay' means the total remunera-
12 tion paid to an employee in a workweek divided by all hours worked
13 by the employee during the workweek; and

14 "(7) 'total remuneration' includes all remuneration for employ-
15 ment paid to, or on behalf of, an employee, except--

16 "(A) payments as rewards for service which are
17 not measured by or dependent on hours worked, production, or
18 efficiency;

19 "(B) payments for travel expenses or other similar expenses
20 incurred by an employee in furtherance of an agency's interest
21 which are not related to hours worked;

22 "(C) payments at the sole discretion of an agency which
23 are not related to hours worked;

24 "(D) contributions by an agency to a fund for retire-
25 ment, insurance or similar benefits;

1 "(E) extra compensation provided by a premium rate paid
2 for hours worked by an employee in excess of the normal
3 workweek applicable to the employee;

4 "(F) extra compensation provided by a premium paid for
5 hours worked on a Sunday or a holiday which is at least one
6 and one-half times an employee's rate of pay for work performed
7 in nonovertime hours; or

8 "(G) extra compensation provided by a night pay differ-
9 ential which is at least one and one-half times an employee's
10 rate of pay for work performed in nonovertime hours."

11 (c) Section 5542 is amended--

12 (1) by amending subsection (a) to read as follows:

13 "(a) For a full-time employee, hours of work outside
14 the employee's basic workweek as defined in section 6101(a)
15 of this title and which exceed 40 hours in an administrative
16 workweek are overtime work. For a part-time employee,
17 hours of work outside the employee's scheduled tour of duty
18 and which exceed 40 hours in an administrative workweek are
19 overtime work. For an intermittent employee, hours of work
20 which exceed 40 hours in an administrative workweek are overtime
21 work. An employee shall be paid for overtime work, except as
22 otherwise provided by this subchapter, at the following rates:

23 "(1) For an exempt employee, the employee shall be
24 paid for officially ordered or approved overtime work at
25 an overtime hourly rate of pay equal to one and one-half

1 times the hourly rate of basic pay of the employee,
2 except that an employee paid under subchapter III of
3 chapter 53 or chapter 54 of this title whose basic pay is
4 at a rate which exceeds the minimum rate of basic pay for
5 GS-10 shall be paid at an overtime hourly rate of pay
6 equal to one and one-half times the hourly rate of the
7 minimum rate of basic pay for GS-10.

8 "(2) For a nonexempt employee, the overtime hourly rate
9 of pay is an amount equal to one and one-half times the
10 hourly regular rate of pay of the employee."; and
11 (2) by amending subsection (b)(2) to read as follows:

12 "(2) time spent in a travel status away from the official
13 duty station of an employee is hours of work when the travel
14 meets one of the following conditions--

15 "(A) for an exempt employee, the travel is performed
16 during the scheduled tour of duty of the employee, or the
17 travel is performed outside the scheduled tour of duty of
18 the employee and the travel (i) involves the performance
19 of work while traveling, (ii) is incident to travel that
20 involves the performance of work while traveling, (iii)
21 is carried out under arduous conditions, or (iv) results
22 from an event which could not be scheduled or controlled
23 administratively; or

24 "(B) for a nonexempt employee, the travel is performed
25 during the scheduled tour of duty of the employee, or the

1 travel is performed outside the scheduled tour of duty of
2 the employee and the employee is required to (i) perform
3 work while traveling, (ii) travel as a passenger on a
4 one-day assignment, or (iii) travel as a passenger on an
5 overnight assignment during hours on nonworkdays that
6 correspond to the scheduled tour of duty of the employee
7 on normal workdays."

8 (d) Section 5543 is amended to read as follows:

9 "The head of an agency--

10 "(1) may, on request of an employee, grant the employee
11 compensatory time off from his/her scheduled tour of duty
12 instead of payment for an equal amount of time spent in
13 irregular or occasional overtime work; and

14 "(2) may provide that an exempt employee shall be granted
15 compensatory time off from his/her scheduled tour of duty
16 equal to the amount of time spent in irregular or occasional
17 overtime work instead of being paid for that work under
18 section 5542 of this title."

19 (e) Section 5544 is repealed.

20 (f) Section 5545 is amended--

21 (1) in subsection (c)(1) by striking out "(or, for a position
22 described in section 5542(a)(3) of this title, of the basic pay of
23 the position)"; and

24 (2) by inserting after subsection (d) the following new
25 subsection:

1 "(e) The provisions of this section shall not apply to
2 employees whose pay is fixed and adjusted from time to time in
3 accordance with prevailing rates under subchapter IV of
4 chapter 53 of this title or by a wage board or similar administrative
5 authority serving the same purpose."

6 (g) Section 5546 is amended--

7 (1) by amending subsection (a) to read as follows:

8 "(a) An employee who performs work during a regularly
9 scheduled 8-hour period of service which is not overtime work
10 as defined by section 5542(a) of this title, any part of which
11 is performed on Sunday, is entitled to pay for the entire
12 period of service at the rate of his/her basic pay, plus
13 premium pay at a rate equal to 25 percent of his/her rate of
14 basic pay, except that an employee who performs nonovertime
15 work during more than one period of service on Sunday shall be
16 entitled to premium pay under this subsection only for the
17 number of nonovertime hours actually worked on that Sunday or
18 for one period of service, whichever is greater."; and

19 (2) in subsection (b)--

20 (A) by inserting after "performs" the following:
21 "nonovertime";

22 (B) by inserting a period after "holiday work"; and

23 (C) by striking out "which is not--(1) in excess of 8
24 hours; or (2) overtime work is defined by section 5542(a) of
25 this title".

1 (h) Section 5547 is amended to read as follows:

2 "An exempt employee paid under subchapter III of chapter 53 or
3 chapter 54 of this title may be paid premium pay under sections
4 5542, 5545(a)-(c), and 5546(a) and (b) of this title only to
5 the extent that the payment does not cause the employee's
6 aggregate rate of pay for any pay period to exceed the maximum
7 rate for GS-15."

8 (i) Section 5548(b) is amended by striking out "sections" and
9 inserting in lieu thereof "section" and by striking out "and 5550".

10 (j) Section 5550 is repealed.

11 (k) Section 5596 is amended in subsection (b)(1) by striking out
12 "or reduction" and inserting in lieu thereof ", reduction or denial".

13 (l) Section 5941 is repealed.

14 (m) Chapter 59 is amended by adding at the end thereof the following
15 new section:

16 "Sec. 5949. Staffing differentials

17 "(a) For the purpose of this section, "employee" and "position"
18 include employees and positions under the statutory compensation systems
19 as defined in section 5301(f) of this title and such other compensation
20 systems as the Office of Personnel Management may prescribe; but not
21 under--

22 "(1) the Central Intelligence Agency;

23 "(2) the United States Postal Service; and

24 "(3) the Senior Executive Service as defined in section 2101a
25 of this title.

1 "(b) Upon determining that the Government is experiencing significant
2 difficulty in recruiting or retaining well-qualified individuals, the
3 Office may establish and thereafter, through periodic review, adjust or
4 abolish staffing differentials for one or more employees or positions,
5 as occupationally, organizationally, and geographically appropriate.

6 "(c) Under service agreements or such other procedures as the
7 Office shall prescribe, staffing differentials established under this
8 section may be paid in one or more lump-sums or in the same manner and
9 at the same time as basic pay.

10 "(d) Any differential paid under this section is not basic pay
11 within the meaning of section 5334(g) of this title and is not an
12 equivalent increase within the meaning of section 5335(a) of this title.
13 The aggregate differential payable to any employee on an annual basis
14 when combined with the employee's annual rate of basic pay may not be
15 more than 25 percent above the annual rate of basic pay for GS-18 as
16 established under section 5305 of this title.

17 "(e) The Office of Personnel Management shall prescribe regula-
18 tions in consultation with the Office of Management and Budget to carry
19 out the provisions of this section."

20 (n) The analysis of chapter 59 is amended by adding at the end
21 thereof the following new item: "5949. Staffing differentials."

22 Sec. 5. Attendance and Leave Amendments

23 (a) Section 6101 is amended--

24 (1) by amending subsection (a)(1) to read as follows:

25 "(a)(1) For the purpose of this section 'agency' and

1 'employee' have the meanings given them by section 5541 of
2 this title.";

3 (2) in subsection (a)(2)(A) by striking out "administrative";

4 (3) by repealing subsection (a)(3)(D);

5 (4) in subsection (a)(5) by inserting at the end thereof the
6 following: "The Administrative Office of the United States Court
7 may apply this subsection to employees under the judicial branch.";
8 and

9 (5) by repealing subsection (b)(1).

10 (b) Section 6103 is repealed.

11 (c) Section 6104 is repealed.

12 (d) Section 6105 is repealed.

13 (e) Chapter 63 is amended by adding at the end thereof the following
14 new sections:

15 "Sec. 6327. Holidays; closures by Executive or administrative order

16 "(a) The following are legal public holidays:

17 New Year's Day, January 1.

18 Martin Luther King, Junior's Birthday, January 15.

19 Washington's Birthday, the third Monday in February.

20 Memorial Day, the last Monday in May.

21 Independence Day, July 4.

22 Labor Day, the first Monday in September.

23 Columbus Day, the second Monday in October.

24 Veterans Day, November 11.

25 Thanksgiving Day, the fourth Thursday in November.

1 Christmas Day, December 25.

2 "(b) For the purpose of statutes relating to pay and leave of
3 employees whose tour of duty is scheduled on 5 consecutive workdays and
4 is followed by 2 consecutive nonworkdays, with respect to a legal public
5 holiday and any other day declared to be a holiday by Federal statute or
6 Executive order, the following rules apply:

7 "(1) instead of a holiday that occurs on the first consecutive
8 weekly nonworkday of an employee, the workday immediately before
9 such nonworkday is a legal public holiday;

10 "(2) instead of a holiday that occurs on the second consecutive
11 weekly nonworkday of an employee, the workday immediately after
12 such nonworkday is a legal public holiday.

13 "Except as provided in subsection (c) of this section, the Office
14 of Personnel Management shall prescribe regulations governing pay
15 and leave treatment for employees whose tour of duty is scheduled other
16 than on 5 consecutive workdays when a legal public holiday falls on
17 a nonworkday.

18 "(c) For the purpose of statutes relating to pay and leave of
19 employees, with respect to a legal public holiday and any other day
20 declared to be a holiday by Federal statute or Executive order, the
21 following rules apply for determining the holiday for a full time
22 employee for whom the head of an agency has established the first
23 40 hours of duty performed within a period of not more than six days
24 of the administrative workweek as his basic workweek because of the
25 impracticability of prescribing a regular schedule of definite hours

1 of duty for each workday:

2 "(1) if a holiday occurs on Sunday, the head of the agency
3 shall designate in advance either the Sunday or Monday as the
4 employee's holiday and the employee's basic 40-hour tour of duty
5 shall be deemed to include eight hours on the day designated as
6 the employee's holiday;

7 "(2) if a holiday occurs on Saturday, the head of the agency
8 shall designate in advance either the Saturday or the preceding
9 Friday as the employee's holiday and the employee's basic 40-hour
10 tour of duty shall be deemed to include eight hours on the day
11 designated as the employee's holiday;

12 "(3) if a holiday occurs on any other day of the week, that
13 day shall be the employee's holiday, and the employee's basic
14 40-hour tour of duty shall be deemed to include eight hours on
15 that day; or

16 "(4) if a holiday is less than a full day, proportionate credit
17 will be given under paragraphs (1), (2), or (3) of subsection (c) of
18 this section.

19 "(d) If the workday of any employee covers portions of two calendar
20 days and the employee would, except for this subsection, ordinarily be
21 excused from work scheduled for the hours of any calendar day on which a
22 holiday falls, the employee shall instead be excused from work on the
23 entire workday which commences on any such calendar day.

24 "(e) In administering the provisions of law relating to pay and
25 leave of absence, the workdays referred to in subsections (b), (c), and

1 (d) of this section shall be treated as holidays in lieu of the corresponding
2 calendar holidays. 'Workday' is defined as those hours which comprise
3 in sequence the employee's regular daily tour of duty within any 24-hour
4 period, whether falling entirely within one calendar day or not. 'Holiday' is
5 defined as those days listed in subsection (a) of this section or any
6 other calendar day designated as a holiday by Federal statute or Executive order.

7 "(f) January 20 of each fourth year after 1965, Inauguration Day,
8 is a legal public holiday for the purpose of statutes relating to pay
9 and leave of employees as defined by section 2105 of this title employed
10 in the District of Columbia, Montgomery and Prince Georges Counties in
11 Maryland, Arlington and Fairfax Counties in Virginia, and the cities of
12 Alexandria and Falls Church in Virginia. When Inauguration Day
13 falls on Sunday, the next succeeding day selected for the public observance
14 of the inauguration of the President is a legal public holiday for the
15 purpose of this subsection for employees who are scheduled to perform
16 work on that day.

17 "(g) When an employee as defined by section 2105 of this title who
18 has a scheduled tour of duty and whose appointment is not limited to 90
19 days or less or who has been currently employed for a continuous period
20 of 90 days under one or more appointments without a break in service is
21 relieved or prevented from working on a day--

22 "(1) solely because of the occurrence of a legal public
23 holiday under this section, or a day declared a holiday by Federal
24 statute or Executive order; and

25 "(2) on which agencies are closed by Executive order;

1 the employee is entitled to the same pay for that day as for a day on
2 which an ordinary day's work is performed without loss of, or reduction
3 in, leave to which the employee is otherwise entitled, credit for time
4 or service, or performance or efficiency ratings.

5 "(h) An activity or a portion of an activity may, by administrative
6 order, be closed and employees dismissed when work cannot be performed
7 because of--

8 "(1) the occurrence of a local holiday;

9 "(2) the interruption of normal operations of the establish-
10 ment by events beyond the control of management or employees; or
11 "(3) managerial reasons which require the closing of an
12 establishment or portions thereof for short periods of time.

13 "The dismissal of employees under the provisions of this subsection
14 shall be designated as administrative dismissal. When such dismissals
15 are authorized, the employee may be granted administrative leave or may
16 be required to use annual leave or leave without pay in accordance with
17 regulations prescribed by the Office of Personnel Management, and for local
18 holidays overseas, in consultation with the Department of State.

19 "(i) An Executive agency may not be closed by a head of an agency
20 as a mark to the memory of a deceased former official of the United
21 States.

22 "Sec. 6328. Administrative leave

23 "In accordance with regulations prescribed by the Office of Personnel
24 Management an employee may be excused without loss of, or reduction in,
25 pay, leave to which the employee is otherwise entitled, credit for time

1 or service, or performance or efficiency ratings--

2 "(1) for limited periods of time--

3 "(A) to participate in activities determined to be of interest
4 or concern to the Federal Government; or

5 "(B) for other reasons determined by management to warrant
6 excusal;

7 "(2) for extended periods of time under extraordinary or unique
8 circumstances or conditions, with the prior approval of the Office
9 of Personnel Management; or

10 "(3) for periods of dismissal as shown under section 6327(h).

11 "Sec. 6329. Regulations

12 "Unless otherwise provided in this subchapter, the Office of Person-
13 nel Management may prescribe regulations for the administration of this
14 subchapter.

15 "Sec. 6330. Leave without pay; absence without leave, other nonduty
16 status.

17 "Unless otherwise provided for in law, the Office of Personnel
18 Management is authorized to provide for, and otherwise regulate, periods
19 of nonduty status to include leave without pay and absence without leave
20 as may be necessary for the good of the executive branch."

21 (f) Chapter 63 is further amended--

22 (1) in the catchline by adding "and Other Absences";

23 (2) in the heading of subchapter II by striking out "Other
24 Paid Leave" and inserting in lieu thereof "Other Leave and Absences";

25 (3) in section 6302(b) by striking out "basic administrative

1 workweek" and inserting in lieu thereof "scheduled tour of duty";
2 and

3 (4) in section 6322 by repealing subsection (c).

4 (g) The analysis of chapter 61 is amended by striking out---

5 (1) "6103. Holidays.";

6 (2) "6104. Holidays; daily, hourly, and piece-work basis
7 employees."; and

8 (3) "6105. Closing of Executive departments.".

9 (h) The analysis of chapter 63 is amended---

10 (1) in the heading of subchapter II by striking out "Other
11 Paid Leave" and inserting in lieu thereof "Other Leave and Absences";
12 and

13 (2) by adding at the end thereof the following new items:

14 (A) "6327. Holidays; closures by Executive or adminis-
15 trative order.";

16 (B) "6328. Administrative leave.";

17 (C) "6329. Regulations."; and

18 (D) "6330. Leave without pay; absence without leave,
19 other nonduty status.".

20 Sec. 6. Premium Pay Special Authority

21 (a) Subpart D of Part III of title 5, United States Code, is
22 amended by adding the following new chapter:

23 "Chapter 50 - Special Authority

24 "Sec. 5001. Premium pay and allowances special authority

25 "(a) For the purpose of this section, 'employee' means a civil

1 service employee in the executive branch of the Government of the
2 United States, except an employee of the United States Postal Service.

3 "(b) Notwithstanding any other provision of law, the President may
4 establish, modify, consolidate, or abolish Federal premium pay and
5 allowances provisions, except those relating to employment in foreign
6 areas, pertaining to an employee in order to eliminate conflicting or
7 contradictory requirements, provide for adjustment of Federal provisions
8 in light of the non-Federal sector practices and any special requirement
9 of the Federal service, or provide equitable premium compensation to all
10 Federal employees working under similar circumstances.

11 "(c) Action taken by the President to establish, modify, consolidate,
12 or abolish Federal premium pay and allowances provisions, except those
13 relating to employment in foreign areas, shall modify, supersede, or
14 render inapplicable, as appropriate, any provision of law or prior
15 action by the President under this section which is inconsistent with
16 the action taken by the President.

17 "(d) The President shall transmit a report to the Congress when he
18 takes action under this section."

19 (b) The table of chapters for part III of title 5, United States
20 Code, is amended by inserting before the item relating to chapter 51 the
21 following new item:

22 "Chapter 50 - Special Authority".

23 Sec. 7. Technical and Conforming Amendments

24 Title 5, United States Code, is amended as follows:

25 (1) Section 2105(c)(1) is amended by striking out "subchapter IV

1 of chapter 53 and sections 5550 and" and inserting in lieu thereof
2 "chapter 50, subchapter IV of chapter 53, subchapter V of chapter
3 55, chapter 61, and section";

4 (2) Section 2301(b)(3) is amended by striking out "private" and
5 inserting in lieu thereof "non-Federal";

6 (3) Section 5102(c)(26) is amended by striking out "or" at
7 the end of the paragraph; section 5102(c)(27) is amended by striking
8 out the period at the end of the paragraph and inserting in lieu
9 thereof "; or "; and section 5102 is further amended by adding at
10 the end thereof the following new paragraph:

11 "(28) a special project employee paid under section 5376 of
12 this title.";

13 (4) Section 5402(a) is amended to read as follows:

14 "(a) In accordance with the purpose set forth in section
15 5401(a)(1) of this title, the Office of Personnel Management shall
16 establish a merit pay system which shall provide for a range of
17 basic pay for each grade to which the system applies in each local
18 pay area, which range shall be limited by the minimum and maximum
19 rates of basic pay for each such grade under each local pay schedule
20 under chapter 53 of this title. Pay may not be paid, by reason of
21 any provision of this chapter, at a rate in excess of the rate of
22 basic pay for level V of the Executive Schedule."; and

23 (5) Section 5504 is amended by striking out "basic administra-
24 tive workweek" each time it appears and inserting in lieu thereof
25 "basic workweek".

1 Sec. 8. Pay and Benefits Saving

2 (a) Notwithstanding the provisions of subchapter VI of chapter 53
3 of title 5, United States Code, the Office of Personnel Management shall
4 prescribe regulations providing pay retention, without time limit, for
5 employees whose pay would otherwise be reduced by reason of the initial
6 application of the provisions of this Act. Any employee receiving
7 retained pay under this Act shall receive one-half of the amount of each
8 subsequent increase in the maximum rate of the grade or pay level to
9 which assigned until the retained pay is equalled or exceeded by the
10 maximum step of the grade or pay level to which assigned.

11 (b) Any changes in classification or pay required by the initial
12 implementation of this Act are not adverse actions as defined in chapter
13 75 of title 5, United States Code.

14 (c) During the first five years following the date of enactment of
15 this Act there will be no downward adjustment of benefit provisions
16 pursuant to section 5309(a) of this title.

17 (d) The pay of special project employees as defined by section
18 5376 of title 5, United States Code, on the rolls on the effective date
19 of this Act shall not be reduced by reason of enactment of this legislation.

20 (e) Additional compensation based on living cost factors being paid to
21 an employee under section 5941 of title 5, United States Code, to the
22 extent that additional compensation is not offset by other provisions of this
23 Act, or actions of the U.S. Postal Service, shall be continued and shall be
24 reduced by twenty percent annually until terminated. Additional compensation
25 paid to an employee on the basis of environmental factors under section 5941

1 of title 5, United States Code, shall continue until the completion of the
2 employee's employment agreement following implementation of section 5949
3 of that title as added by section 4(m) of this Act.

4 Sec. 9. Effective Date

5 (a) Except for the provisions of section 3 of this Act, the provisions
6 of this Act shall be placed into effect at such times as the President
7 may direct within a 5-year period after enactment.

8 (b) For the purpose of implementing the provisions of section 3 of
9 this Act, a full-scale wage survey shall be conducted in each individual
10 wage area within one year after enactment. The provisions of section 3
11 of this Act are effective with respect to each individual wage area
12 defined by the Office of Personnel Management under section 5343(a)(1) of
13 title 5, United States Code, on the effective date of the wage schedule
14 established pursuant to the first full-scale wage survey ordered on or
15 after October 1, 1979, except that paragraph (2) of subsection (a) will
16 be effective on October 1, 1979.

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STATEMENT OF PURPOSE AND JUSTIFICATION

To accompany a draft bill "To amend title 5, United States Code, to extend the pay comparability concept to a total compensation comparability concept encompassing both pay and benefits, and for other purposes."

PURPOSE

The purpose of this draft bill is to provide a statutory basis within title 5, United States Code, for reforms that would broaden and improve the comparability process. These reforms would:

- broaden the comparability process to include pay and benefits under a total compensation comparability concept;
- pay most white collar employees on a locality basis;
- include State and local governments in the comparability survey universe;
- eliminate statutory features of the Federal Wage System which serve to overpay Federal blue-collar employees;
- align Federal premium pay policy more closely with non-Federal policy and practices and with the provisions of the Fair Labor Standards Act; and
- give the Executive Branch flexibility to recruit and manage a quality workforce.

No employee's basic pay would be reduced as a result of any of these reforms. The bill includes provisions for saving pay, without time limits, for any employee who would otherwise be adversely affected.

To achieve our purpose, the draft bill proposes to revise chapters 53, 55, 59, 61, and 63 of title 5, United States Code. Required conforming and technical amendments to title 5 are also included in the bill.

JUSTIFICATION

Since it was adopted by Congress in 1962, the comparability principle has been accepted as being the most effective means of enabling the Federal Government to obtain the quality and quantity of employees needed while maintaining fairness to both employees and the nation's taxpayers. Until now, however, comparability has been defined in terms of pay alone. In enacting the Federal Salary Reform Act of 1962, Congress recognized that a substantial gap existed between Federal pay and

the pay of other employers with whom the Federal Government competed for employees, and saw no need at that time to provide a more accurate and comprehensive definition of comparability in order for the process to produce acceptable results. Since then, however, the gap between Federal and non-Federal pay has been eliminated, and some would argue that it has been reversed. Therefore, increasing attention has been focused on the comparability process and the accuracy and completeness of the comparability measure used.

There have been numerous studies of, and reports on the Federal compensation systems since 1969 when pay comparability was reached. Some of these include:

- the Comptroller General's Report to the Congress titled Improvements Needed in the Survey on Non-Federal Salaries Used As Basis for Adjusting Federal White Collar Salaries, dated May 11, 1973;
- Civil Service Commission pay research projects, conducted from 1973 to 1975, in response to the concerns of the General Accounting Office and other criticisms of the pay comparability process;
- Comptroller General's report titled Improving the Pay Determination Process for Federal Blue-Collar Employees, dated June 3, 1975;
- Comptroller General's report titled Federal White Collar Pay Systems Need Fundamental Changes, dated October 30, 1975;
- the Report of the President's Panel on Federal Compensation, dated December 2, 1975; and
- the Federal Personnel Management Project, authorized by President Carter under his Reorganization Project, which made extensive studies with respect to the improvement of the quality and effectiveness of the Federal Civil Service. The Compensation Task Force of the Personnel Management Project, headed by a noted private sector expert, considered the findings and recommendations of these earlier studies and also reached out to obtain the views of a broad spectrum of interested groups and organizations. The final staff report was issued in December 1977.

These studies, along with other criticisms from industry, taxpayer groups, and from within the Government itself, indicated a number of problems with the Federal compensation program that needed to be addressed. The most important of these include:

- o Benefits, once a minor portion of compensation, have grown steadily in size and importance in all sectors of the U.S. economy. Today, they represent one third of total compensation for many employees. Because benefits have become a significant part of compensation, it has become increasingly difficult to determine whether Federal employees are ahead of, even with, or behind the total compensation of their counterparts in the non-Federal sector.
- o In the non-Federal sector, pay for many white-collar workers varies considerably according to the local area in which they are employed. On the other hand, Federal employees are paid from a nationwide pay schedule based on average pay throughout the country. This variance has resulted in Federal employees in some areas being overpaid in comparison to their counterparts in the labor market in which they are competing, while in other areas they are being underpaid.
- o When the comparability principle was first introduced in 1962, State and local government employees were a relatively small part of the U.S. workforce -- approximately 6.1 million workers of whom 2.8 million were white-collar. Additionally, their salaries were considered to be "administered rates" rather than reflecting competitive market forces, including collective bargaining. Over the years, however, the number of State and local government employees has grown dramatically -- by 1978 the employment level has increased to approximately 12.8 million -- as have the number of such employees covered by collective bargaining agreements. Thus, State and local government workers now represent a significant part of the non-Federal workforce.
- o Several features of the statutory Federal Wage System are inconsistent with the prevailing rate principle and result in rates for Federal blue-collar employees that are significantly higher than those in the non-Federal sector. These are: the required step-rate and payline structure, the restriction of the survey universe to private industry, the uniform night-shift differential, and the "Monroney Amendment".
- o The traditional compensation methods of the General Schedule have not proved to be effective tools for managing certain specialized occupations. The job alignment and evaluation, career progression, and compensation practices generally found in the non-Federal sector for certain occupations are so radically different from the practices for other occupations under the General Schedule that the Federal Government's management abilities have been severely hampered.

- o In general, the laws governing compensation in the Executive Branch have become too inflexible to allow for effective recruitment and management of a high quality workforce.

The administration feels strongly that continuing overpayment of Federal blue-collar employees is unjustified, and that systematic over and underpayment of Federal white-collar employees is a disservice to taxpayers and to employees. We are asking the Congress to agree to changes in Government compensation management that ensure the principle of comparability is carried out as effectively as possible.

To achieve this goal, we are proposing in this legislation to make reforms in the compensation system encompassing six major areas:

- Total compensation comparability
- White-collar locality pay
- Survey of State and local governments
- Elimination of overpayment of blue-collar employees
- Improved premium pay policy
- Workforce management flexibility

TOTAL COMPENSATION COMPARABILITY

The proposed legislation would establish a total compensation comparability policy relating to pay and benefits for most Federal employees, and authorize the President to adjust Federal benefits (with the exception of retirement benefits) in addition to rates of pay in order to achieve comparability of all compensation between the Federal and non-Federal sectors.

At the present time, comparability between the Federal and private enterprise sectors is measured and maintained on the basis of pay alone for the General Schedule, the Prevailing Rate System, and other statutory pay systems. On the other hand, Federal benefits are established and changed on an individual basis through legislative enactments. There is currently no means of comparing Federal and non-Federal benefits either to each other or to the overall package of pay and benefits provided these groups of employees. However, several recent studies have concluded that (1) Federal and non-Federal employee benefits represent a significant, and increasing percentage of total employee compensation, and (2) comparability in pay without reference to employee benefits does not ensure equitable compensation between Federal employees and those in the non-Federal sector.

One of the major problems that has prevented the adoption of a total compensation comparability system in the past has been the lack of a satisfactory method for evaluating and comparing benefits in the Federal and non-Federal sectors. This problem has now been largely overcome by the Office of Personnel Management, which has developed a method of evaluating and comparing benefits -- known as the "level of benefits" or standardized costing method. Under this approach, the provisions of each benefit plan being evaluated would be measured against a common standard to determine the worth of a plan. Plans with identical provisions will always be evaluated as having the same worth. These standardized costs would then be compared to the counterpart Federal cost derived by valuing the Federal benefits plans against the same standard. The difference between these two costs, along with pay comparisons, will indicate the extent to which Federal pay and/or benefits must be adjusted in order to achieve total compensation comparability between the Federal and non-Federal sectors.

The proposed legislation gives the President the authority to adjust all benefits, except retirement, in order to achieve total compensation comparability. Legislative action by the Congress would still be required for adjustments to the retirement system. Prior to any benefits adjustment, the proposed legislation requires the President to inform Congress of the proposed benefits changes at least thirty days before the effective date of the proposed changes, and allows Congress to disapprove the proposed adjustment through the joint resolution process. However, the proposed legislation states that there will be no downward adjustment of benefit provisions by the President during the first five years following the date of enactment.

Under the proposed legislation, total compensation comparability would be applicable to employees paid under the General Schedule and the Merit Pay System; employees paid under statutory compensation systems related to the General Schedule, i.e., the Foreign Service schedules and the Veterans' Administration, Department of Medicine and Surgery schedules; and appropriated fund employees in regular and special schedules of the Federal Wage System. Prior to a systems change affecting an employee in the Foreign Service or Department of Medicine and Surgery, Veterans' Administration, who is covered by the other statutory compensation systems, appropriate consultation with the Secretary of State and the Administrator of the Veterans' Administration would be provided. This means that total compensation comparability will apply to most Federal civilian white- and blue-collar employees.

Total compensation comparability will not apply to any other employees. For example, it will not apply to Executive Schedule employees, those in the Senior Executive Service, Postal Service employees, Members of Congress or Congressional employees, or employees in agencies that administratively choose to follow the General Schedule pay system.

LOCALITY PAY

In some areas of the country, private businesses point out that the Federal Government is competing unfairly in the labor market by over-paying its employees, while in other areas Federal agency officials and Federal employee unions complain about the lack of competitiveness of our pay system. Our own studies indicate that both criticisms are on target. After careful consideration and consultation with a variety of experts, this Administration has concluded that the most practical way to more closely approximate pay comparability is to vary salaries for all white-collar occupations under the General Schedule on the basis of locality pay, i.e., based on a relationship to rates paid to non-Federal workers in the local area in which they work.

A brief outline of the locality pay system is as follows:

- The present General Schedule would continue with the same grade and pay structure that is now in law;
- The Bureau of Labor Statistics would support the pay system with surveys, although data from other reliable sources could also be used;
- Local pay schedules would be set in relationship to the national General Schedule;
- Local schedules would have the same number of grades and the same pattern of within-grade steps as the national General Schedule;
- Salary rates for most Federal employees covered under the system would vary from area to area, and would reflect the local pay patterns in each area;
- Cost-of-living allowances for employees in non-foreign areas would be discontinued since pay rates would now be determined from local pay data;
- Salary rates for the highest level professionals, administrators and executives within an area would be the same as those of the national General Schedule; and
- The national General Schedule would continue to be used to establish the linkage with the other statutory compensation systems, i.e., the Foreign Service and the Veterans' Administration's Department of Medicine and Surgery, and would continue to be used for employees in foreign areas as well as the basis for calculating the percentage increases in the Executive Schedule and military pay rates.

STATE AND LOCAL GOVERNMENTS

We are proposing the addition of State and local governments to the survey universe for both blue- and white-collar compensation. This change means

that our compensation surveys will cover the entire non-Federal sector, not just private enterprise.

When the pay comparability concept was introduced in 1962, Congress was advised that adequate measurement of such economic factors as purchasing power, standard of living, and productivity would be found in the salaries paid by private enterprise, particularly as salaries are determined in the course of the labor-management bargaining process. At that time, State and local government salaries were believed to lack these economic characteristics. It was also believed that State and local government salaries would be far outweighed by private enterprise data.

Since that time, both the total number of State and local government employees and the number that are represented by or belong to unions have increased substantially. The growing importance of this sector of the economy has led to the conclusion that it can no longer be ignored in the Federal comparability process. Consequently, the proposed legislation provides for the inclusion of State and local governments as part of the survey universe for both blue-collar and white-collar pay and benefits.

FEDERAL WAGE SYSTEM

One of the basic underlying principles of the Federal Wage System is that Federal blue-collar pay rates should be maintained in line with prevailing rates and practices within a local wage area. Several features of current law are inconsistent with this basic principle in that they serve to pay Federal blue-collar employees at rates significantly higher than their non-Federal counterparts. The proposed legislation would repeal or modify these provisions in order to eliminate the inflationary aspects of the Federal Wage System and restore the Federal government to a position more comparable to the market place. It would also relieve the Federal taxpayer of an unjustified burden and would have a moderating effect on the distortion of the traditional pay relationships within the Government. Specifically, this legislative proposal would change the Federal Wage System in the following ways.

The requirement for a payline fixed at step two and for five step-rates in each non-supervisory grade would be repealed. These requirements result in the maximum rate for each grade being set at twelve percent above the local prevailing rates. Since all satisfactory Federal blue-collar employees move automatically through the steps to the top step of the grade, this provision ensures that they will receive a rate 12 percent above local prevailing rates. By eliminating these features, the proposed legislation would enable the Office of Personnel Management to establish step-rate structures more nearly consistent with non-Federal prevailing practices and to establish a payline structure which would result in the average rates paid to Federal blue-collar employees being comparable to the average rates in the non-Federal

sector in each wage area.

The provision referred to as the "Monroney Amendment", which requires the use of out-of-area wage rate data in Federal wage surveys when private industry data comparable to specialized Federal blue-collar jobs are not found in sufficient quantities within the local areas, would also be repealed. This provision is totally incompatible with the principle of paying local prevailing rates. It is not necessary to find job matches for every Federal occupation in a wage area in order to establish an equitable wage schedule. Rather, it is only necessary to obtain a reasonable sample of local industry rates for a full range of skill levels and relate them to the Federal grading structure.

The requirement for uniform 7.5 and 10 percent differentials for second and third shift night work would be repealed in favor of locally determined differentials based on prevailing practices in each area.

The wage survey coverage would be expanded to require surveys of non-Federal establishments outside of private industry, e.g., State and local governments. This is in keeping with an identical proposal for Federal white-collar workers.

The requirement for scheduling wage surveys would be amended to provide for full-scale wage surveys in each wage area at least every third year rather than every second year. This modification will provide flexibility, reduce the annual cost of surveys to the Government, and lessen the burden on non-Federal employers who participate in the surveys.

The legislation would also apply the President's alternative plan authority to the Federal Wage System. This is necessary to be consistent with the provision of this legislative proposal of having Presidential plan authority apply to the locality based General Schedule.

By eliminating these statutory features which contravene the local prevailing rate principle, enactment of this legislation would give the Office of Personnel Management much needed flexibility to bring the operation of the Federal Wage System closer to prevailing non-Federal practices and help bring true compensation comparability for Federal workers.

PREMIUM PAY

The current premium pay provisions of title 5, United States Code, would be amended to bring overtime pay administration in the Federal sector more in line with such practices in the private sector. The

proposed legislation would amend overtime pay (1) to provide a statutory entitlement under title 5, United States Code, for nonexempt employees (employees subject to the FLSA) which equals or exceeds the statutory entitlement for overtime work provided under the Fair Labor Standards Act of 1938, as amended; and (2) to retain the existing overtime pay entitlements in title 5 for exempt employees (employees not subject to the FLSA). Nonexempt employees would be paid for overtime work at a rate at least equal to the FLSA and, thus, the current need for dual computations to determine which law (title 5 or FLSA) provides the greater overtime pay benefit would be eliminated.

WORKFORCE MANAGEMENT FLEXIBILITIES

Special Occupational Services

A relatively uniform and somewhat inflexible set of personnel policies and practices for the administration of classification and pay exists under the General Schedule system. These have not proved to be effective tools for managing certain specialized occupations. The job alignment and evaluation, career progression, and compensation practices generally found in the non-Federal sector for certain occupations are so different from the practices for most other occupations under the General Schedule that the Federal Government's management abilities have been significantly hampered.

In the past, these shortcomings have created pressures on the pay and classification systems from employees, unions, professional organizations, and Federal agencies, and have variously resulted in (1) statutory creation of separate pay systems outside the General Schedule, often covering a limited number of employees in an occupation, e.g., those in one particular agency; (2) frequent requests to the Office of Personnel Management for occupational studies to inappropriately upgrade these occupations; and (3) efforts within agencies to have positions in these occupations upgraded to levels not warranted by the classification standards. When these pressures are successful, the result is often new pressures from other employees, unions, etc. to reestablish the pay parity that previously existed.

In order to properly resolve such problems, the Executive Branch must have the flexibility to move in a timely manner to implement equitable programs for treating occupations that do not fit the mold of the General Schedule. This flexibility already exists for the Federal Wage System, whereby the Office of Personnel Management has the authority to create, change, or abolish special schedules.

Enactment of this legislation would give the Office of Personnel Management, in consultation with the Office of Management and Budget, the authority to establish, administer, and abolish separate special Federal white-collar occupational pay systems. Separate classification plans could

also be established for these Special Occupational Services, as deemed necessary by the Office of Personnel Management. The legislative proposal would authorize the Office of Personnel Management to determine the necessity for placing occupations or groups of occupations in Special Occupational Services based on criteria established by the Office of Personnel Management.

In order to ensure that the Special Occupational Services are used only as long as they are necessary to solve significant management problems, it is intended that the Office of Personnel Management will review each Special Occupational Service within a period not to exceed five years from the date of its establishment, and each succeeding five year period. Those Services determined no longer to be essential would be abolished and the positions placed either in another, more appropriate, Special Occupational Service, or under the General Schedule.

Staffing Differentials

The proposal provides for a new compensation tool -- a staffing differential or "bonus" to recruit and retain highly qualified individuals with particular skills. Upon determining that the Government is experiencing significant difficulty in recruiting or retaining such individuals, the Office of Personnel Management could establish (and thereafter adjust or abolish when no longer needed) staffing differentials for one or more Executive Branch white-collar employees or positions as occupationally, organizationally, or geographically appropriate. Meeting the competition, recruiting a very scarce skill, or movement to an undesirable location are illustrative of situations when a staffing differential might mean the difference between being able to recruit, retain, or transfer people and losing them.

The proposed staffing differential would replace the current authority of the Office of Personnel Management to authorize special salary ranges for Executive Branch white-collar employees when the Government is significantly handicapped in recruiting and retaining well qualified personnel due to substantially higher salaries paid in the private sector. It also would replace current authority of the Office of Personnel Management to approve rates above the minimum of the rate range in grades GS-11 and above of the General Schedule when candidates for employment possess superior qualifications or for other reasons.

Attendance and Leave

The purpose of the amendments relating to attendance and leave is to (1) clarify the coverage and terminology of the basic 40-hour workweek provision; (2) accomplish the restructuring of chapters 61 and 63 of title 5; (3) clarify the determination of "in lieu of" holidays when legal holidays fall on nonworkdays; (4) clarify that entitlement to an Inauguration Day holiday within the Washington, D.C. metropolitan area is limited to employees who are actually scheduled to perform work on Inauguration

Day; (5) to provide for the establishment of a legal holiday to honor the memory of Dr. Martin Luther King, Jr. on his birthday; (6) to provide a statutory basis within title 5 for excusing Federal employees from duty when it is in the best interest of the Federal Government; and (7) to expand and more clearly identify the authority of the Office of Personnel Management with regard to the management of the Government's leave programs.

Combining Premium Pay Provisions

The legislative proposal authorizes the President to establish civil service premium pay and non-foreign overseas allowances provisions in the Executive Branch as deemed appropriate to recruit and manage a quality workforce. Separate premium pay and non-foreign overseas allowances provisions should exist only when there are compelling reasons for non-uniform compensation policies for some Federal employees. When they are not warranted, they produce pay inequities among employees performing the same kinds and levels of work.

The legislative proposal would also make many technical and conforming amendments and revisions to title 5, United States Code, which are required by the substantive changes to the compensation system that we are proposing.

In summary, we believe that the proposed legislation provides the means for producing significantly better congruence between Federal and non-Federal compensation policy and practices. We are asking the Congress to give us the tools to modernize our compensation system and allow us to perfect the comparability process. The legislation we are proposing will provide the best, long-term stable policy for the future, and will tell the American people that the Federal Government is a responsible employer --responsible to its employees and to the nation we serve.

SECTION ANALYSIS

To accompany a bill to amend title 5, United States Code, to extend the pay comparability concept to a total compensation comparability concept encompassing both pay and benefits, and for other purposes.

The first section titles the bill as the Federal Employees Compensation Reform Act of 1979.

Section 2. Pay Systems Amendments

Subsection (a) of section 2 amends section 5301 of title 5 to establish a total compensation comparability system by adding a new subsection (a) which states that total compensation includes payments and entitlements which are provided by an employer for an employee in exchange for the performance of work and cost the employer money, either directly or indirectly, now or in the future; are of value to an employee in one or more ways, such as by adding cash to an employee's current income, by creating a present value to the employee based on the prospect of future receipt, or by providing an employee with compensated time off; are typically considered compensation in the non-Federal sector; and are measurable; this subsection also states that total compensation does not include premium pay, with the exception of premium pay under section 5545(c)(1) of title 5, or, with respect to a law enforcement officer, premium pay under section 5545(c)(2) of title 5; by setting forth in subsection (b) the policy of Congress in four principles which apply inclusively to employees under chapters 53 and 54 of title 5, including Prevailing Rate Systems employees under subchapter IV of chapter 53, with the exception of nonappropriated fund employees as defined under section 5342(a)(2)(B) and (C) of title 5, employees in the legislative and judicial branches under section 5307 of title 5, and employees under subchapters II and VIII of chapter 53 of title 5 which contain provisions relating to Executive Schedule pay rates and pay for the Senior Executive Service; the first principle directs that Federal total compensation be comparable with non-Federal total compensation, thereby including both pay and benefits and broadening the comparison frame for comparability from "private enterprise" to "the non-Federal sector," thus providing for comparison with State and local government compensation in the Federal compensation-setting process; the second principle states that Federal total compensation be equal for similar levels of Federal work within a designated pay area; the third principle specifies that pay distinctions be maintained in keeping with work and performance distinctions; lastly, the fourth principle states that the total compensation of the statutory compensation systems shall be interrelated; by setting forth in subsection (c) the purpose of the Federal compensation program as being that of providing a combined value of pay and benefits which is adequate for recruiting, retaining and managing a well-qualified workforce; by adding in subsection (d) a definition for benefit; by stating in subsection (e) that the President

will determine initially and from time to time which benefits will be evaluated, compared, and included in total compensation for the purpose of the total compensation comparability system; by defining statutory compensation system in subsection (f) to mean subchapter III of chapter 53 of title 5 relating to the General Schedule, subchapter IV of chapter 14 of title 22 relating to the Foreign Service of the United States, and chapter 73 of title 38 relating to the Department of Medicine and Surgery of the Veterans' Administration; and by requiring in subsection (g) that the fixing and adjusting of total compensation of each statutory compensation system be carried out in accordance with the principles of subsection (b) of this section and the provisions of section 5305, 5306, 5308, and 5309 of title 5.

Subsection (b) of section 2 repeals section 5303 of title 5 relating to the establishment of special rates of basic pay since this authority is replaced by other special pay authorities in a new section 5949 of title 5.

Subsection (c) of section 2 amends section 5304 of title 5 relating to Presidential policies and regulations by replacing the wording of the section with wording giving the Office of Personnel Management and other agencies as designated by the President authority to issue regulations for the administration of subchapter I of chapter 53, subject to the policies the President may prescribe.

Subsection (d) of section 2 amends section 5305 of title 5 relating to annual compensation reports and adjustments in the catchline by replacing the word "pay" with "total compensation" to conform with the policy of total compensation comparability; by striking out the last sentence in subsection (a); by revising subsection (a)(1)(A) to require a report which (on the basis of appropriate surveys, which are no longer required to be performed annually, or other measures of non-Federal pay, pay change, and benefits as supplied by BLS or, if unavailable from BLS, obtained by the Agent from other sources as determined to be appropriate by the President) first compares the rates of pay for the General Schedule with non-Federal rates of pay for similar levels of work within a designated pay area, and second, compares the value of Federal benefits with the value of non-Federal benefits on the basis of benefit evaluations performed by the Office of Personnel Management; by revising subsection (a)(1)(B) to specify that the Agent's report shall make recommendations for appropriate adjustments in benefits, in addition to rates of pay, in accordance with the principles of total compensation comparability; by revising subsection (a)(2) to state that after considering the report of his Agent and the findings and recommendations of the Advisory Committee on Federal Compensation, as renamed, the President shall adjust the total compensation of each statutory compensation system by adjusting rates of pay, or by making adjustments in benefit provisions, as he deems appropriate under new section 5309, or by an appropriate combination of such pay and benefit adjustments; by revising the last sentence of subsection (a)(3) to indicate that the report transmitted to the Congress shall recommend the percentage adjustments in the rates of pay and adjustments in benefits

for employees under the General Schedule and for employees under the other statutory compensation systems; in subsection (b) by redesignating the Federal Employees Pay Council as the Federal Employees Compensation Council (FECC); by redesignating the pay agent as the Compensation Agent; by redesignating paragraphs (1) through (4) as paragraphs (3) through (6); and by inserting two new paragraphs (1) which authorizes the President's Compensation Agent to define the boundaries of individual local pay areas for employees under the General Schedule and (2) which requires the President's Compensation Agent to obtain and consider the views and recommendations of the Secretary of State or the Administrator of Veterans' Affairs whenever a systems change is contemplated which would affect a compensation system which is administered by them; by including in subsection (b)(2), (as redesignated), pertaining to the establishment of a FECC, the requirement that the FECC shall be composed of representatives of employee organizations which represent, in the case of labor organizations, or include in their membership, in the case of other organizations, substantial numbers of employees under the statutory compensation systems; by including in subsection (b)(4), (as redesignated) pertaining to giving thorough consideration to the views and recommendations of the FECC, the clear authority of the FECC to provide their views and recommendations for the statutory compensation systems with respect to types of benefits to be surveyed by the Bureau of Labor Statistics or, if unavailable from BLS, obtained by the Agent from other sources determined to be appropriate by the President, survey coverage for both pay and benefits, the process of comparing Federal rates of pay with non-Federal rates of pay for similar levels of work within a designated pay area, the adjustments in benefit provisions that should be made and the relationship of the value of benefits to pay adjustments, and the adjustment of pay rates necessary to achieve comparability; in subsection (b)(5) (as redesignated) by redesignating paragraph (2)(A)-(C) as paragraph (4)(A)-(E); by amending subsection (c)(1) to provide alternative plan authority for the statutory compensation systems, Prevailing Rate Systems, Special Occupational Services, and benefit adjustments under new section 5309; by amending subsection (c)(2) to provide that the disapproval of an alternative plan shall be by enactment of a joint resolution rather than by the present procedure for one House disapproval by the Congress and to reflect that upon a joint resolution becoming law, the compensation adjustments for the statutory compensation systems, the Prevailing Rate Systems, and the Special Occupational Services shall be made in accordance with subsection (m) of the section; by revising subsection (1) to include "and benefit provisions" after "rates of pay" to specify that rates of pay and benefits become applicable to the positions in a statutory compensation system; by amending subsection (m) to provide that should a joint resolution disapproving an alternative plan become law as provided in subsection (c)(2) of this section, the President shall adjust the total compensation, or in the event the benefit adjustments has been disapproved by the Congress as provided by section 5309(d)(1) of title 5 the rates of pay of the statutory compensation systems by appropriate amounts reflecting the changes that have occurred in non-Federal compensation for the various levels of work during the

twelve month period preceding the most recent national survey or other measure of non-Federal compensation as such changes have been measured under subsection (a)(1)(A) of this section, and that in addition total compensation adjustments for the Prevailing Rate Systems, and the Special Occupational Services shall be made in amounts determined to be appropriate to provide equitable treatment in relationship to the treatment afforded the statutory compensation systems; in subsection (n) by adding "or benefit provisions" after "rates of pay" and by changing the word "increases" to "adjustments" in order to specify that pay and benefit adjustments shall modify, supersede, or render inapplicable other provisions of law or previous actions; and by revising subsection (o) to add benefit provisions to the requirement for printing rates of pay in the Federal Register and the Code of Federal Regulation.

Subsection (e) of section 2 amends section 5306 of title 5 by substituting "Compensation" for "Pay" in the catchline so that it reads "Advisory Committee on Federal Compensation"; by similarly amending subsection (a) to substitute "Advisory Committee on Federal Compensation" for "Advisory Committee on Federal Pay"; and by revising subsection (b) to indicate that the Committee will review the report of the President's Compensation Agent and to reflect the addition of benefit proposals to the Agent's report.

Subsection (f) of section 2 amends chapter 53 of title 5 by adding a new section: "5309. Adjustment of Benefits; effect on pay-fixing authorities". The sixteen subsections of the new section 5309 establish the benefit adjustment authority and the basis for its use, subject to Congressional oversight, and provide for Presidential control over compensation adjustments made by other pay-fixing authorities. (The meaning of the words "adjust(ed)" and "adjustment(s)" when used in conjunction with the word "benefit(s)" under this section, includes establishing new benefits and discontinuing existing benefits as well as adjusting existing benefits.) Subsection (a) gives the President the authority to adjust appropriate benefit provisions, except those relating to retirement benefits, notwithstanding any other provision of law, in order to carry out the policy and purpose of the total compensation comparability system. Under this authority, the President may adjust benefit provisions including, but not limited to, provisions relating to the types and amounts of benefits and contributions for benefits. This subsection applies to Federal employees paid under the statutory compensation systems, the merit pay system, the Senior Executive Service the Executive Schedule and Special Occupational Services, and prevailing rate employees defined in section 5342(a)(2)(A) of title 5, and executive branch employees paid under section 5307 of title 5 whose rates of pay are fixed by administrative action under law other than under subchapter III of chapter 53 of title 5; except for employees under a statutory compensation system with compensation adjustments effective in October, the President will prescribe the effective dates for benefit changes. Subsection (b) requires that benefit adjustments under this authority be based on the evaluation and comparison of benefits included in total compensation as determined by

the President under section 5301(e) and on data provided by the BLS or, if unavailable from BLS, obtained from other sources as determined to be appropriate by the President under section 5305(a)(1)(A) of title 5. Subsection (c) requires that actuarial and economic assumptions used in benefit evaluations shall conform with assumptions made under subpart C of part II of title 1 of the Budget and Account Procedures Act of 1950 as amended. Subsection (d) requires the President to inform Congress of any proposed benefit change before September 1 of any appropriate year and allows Congress to disapprove the proposed change by a joint resolution approved by the President, or in the event of Presidential objection, a two-thirds override vote of each House of Congress. If the Congress disapproves a proposed benefit adjustment, the full amount of compensation comparability would be directed into a pay adjustment for employees of the statutory compensation systems. However, in the event of the submission of an alternative plan, either the amount of total compensation specified in the alternative plan or the amount reflecting the changes that have occurred in non-Federal compensation for the various levels of work during the twelve-month period preceding the most recent national survey or other measure of non-Federal compensation described in section 5305(a)(1)(A) of title 5 would be directed into a pay adjustment for employees depending on whether the alternative plan was accepted or rejected. (If the President determines that an adjustment in retirement benefits would be desirable in order to achieve total compensation comparability, he would have to submit a legislative proposal to Congress requesting such an adjustment.) Subsections (e) through (l) lay down the rules for each House of Congress with respect to joint resolutions described by this section. Subsection (m) provides that any adjustment of benefits under this section will cause related changes, required for consistency, to be made in all provisions of law enacted prior to the adjustment and in any prior recommendation or adjustment which took effect under this section or prior provisions of law. Subsection (n) requires that adjustments in benefits made under this section be printed in the Federal Register and the Code of Federal Regulations. Subsection (o) provides that the effective date of any adjustment shall be determined under conversion rules prescribed by the President or by any agencies designated by the President. Subsection (p) provides that the President shall direct other pay-fixing authorities to take into account differences in Federal and non-Federal benefit values in determining pay adjustments for employees whose total compensation is fixed and adjusted under this chapter.

Subsection (g) of section 2 amends section 5332(a) of title 5 relating to the General Schedule by incorporating a locality pay rate concept. The locality pay concept would apply only to the General Schedule and not to the other statutory compensation systems. Local pay schedules would be set by the President in relation to the overall General Schedule and these local pay schedules would reflect local non-Federal pay differences. The head of each agency having General Schedule employees in a local pay area must apply that local pay schedule to each such employee, except an employee covered by the merit pay system under section 5402 of title 5, and such pay is considered basic pay in accordance with the General Schedule. This is not intended to exempt the Merit Pay System from the locality pay concept, but does indicate that section 5402 must be consulted

for employee coverage under the Merit Pay System.

Subsection (h) of section 2 amends section 5333 of title 5 relating to the appointment of new employees at the minimum rate of their grade, and higher rates for supervisors of wage board employees by striking the word "wage-board" from the catchline and adding after the word "employees" the phrase "paid under other systems"; by amending subsection (a) to make it clear that new appointments shall be made only at the minimum rate of the grade (Additional compensation deemed necessary to overcome significant staffing problems involving recruiting or retaining well-qualified individuals could be provided under provisions of new section 5949 of title 5); in subsection (b) by striking the phrase "any such prevailing rate employee" and inserting in lieu thereof "any employee under a different Service or pay system" in order to extend the provision that the pay rate for supervisors be above that for subordinates to supervisors of employees in other Services or pay systems, and by providing for the setting of the supervisory pay adjustment at a rate above the maximum of his/her grade or pay level. Presently this provision applies only to General Schedule supervisors of wage grade employees. In addition, the previous pay limitation of the maximum rate of the supervisors grade is eliminated.

Subsection (i) of section 2 amends section 5334 of title 5 relating to rate on change of employee position or type of appointment by amending subsection (b) to provide for pay setting when an employee is promoted while in receipt of grade and/or pay retention and by adding a provision which permits the Office of Personnel Management to issue regulations providing for the setting of pay of a repromoted employee in such a manner that the employee does not, as the result of a repromotion action, receive a higher rate of pay than he/she would have earned had he/she remained in the higher grade, or his/her highest previous rate, whichever is higher; and by adding subsection (g) in which the term "rate of basic pay" is defined. This change is designed to assure the exclusion of all differentials and additional pay of any kind when an individual is converted with his/her position from another pay system into or among the white-collar pay systems.

Subsection (j) of section 2 amends section 5335 relating to within-grade increases in subsection (a) by providing for the granting of within-grade increases to temporary employees who serve in General Schedule positions; and by expanding subsection (d) to provide that the Office of Personnel Management may determine by regulation those types of pay increases other than statutory increases which do not constitute equivalent increases.

Subsection (k) of section 2 amends section 5341 of title 5 relating to policy for Prevailing Rate Systems by limiting principle (3) to non-appropriated fund employees, as defined under section 5342(a)(2)(B) and (C), who are not under the principles of total compensation comparability (this principle states that the level of rates of pay will be maintained in line with prevailing levels for comparable work within a local wage area); by revising principle (4) to state that "the level of total

compensation" (in lieu of "the level of rates of pay") will be maintained so as to attract and retain qualified prevailing rate employees; and by adding a new principle (5) which states that the principles of total compensation comparability will apply to prevailing rate employees with the exception of nonappropriated fund employees.

Subsection (l) of section 2 amends section 5343 of title 5 relating to prevailing rate determinations in subsection (a) by making it subject to amended paragraph (3) of that subsection, and by amending (a)(3) to say that a lead agency will take into account the effect of benefit comparisons in establishing and adjusting wage schedules for those prevailing rate employees who are under the principle of total compensation comparability, as directed by the President.

Subsection (m) of section 2 amends section 5347 of title 5 relating to the Federal Prevailing Rate Advisory Committee (FPRAC) in paragraph (e) by adding benefit provisions that may be adjusted under new section 5309 to the matters that FPRAC shall study in order to advise the Office of Personnel Management.

Subsection (n) of section 2 amends section 5363 of title 5 relating to pay retention by repealing subsection (a)(2) pertaining to positions subject to a reduction or termination of a special rate of pay established under section 5303 of title 5 which is being repealed and replaced with a provision in section 5949 of title 5 pertaining to staffing differentials.

Subsection (o) of section 2 amends chapter 53 of title 5 by adding a new section "5376. Special Project Employees" after section 5375. Special project employees are defined as employees who are employed under an economic or educational opportunity program for whom pay may be fixed by agency heads in accordance with regulations prescribed by the Office of Personnel Management.

Subsection (p) of section 2 amends chapter 53 of title 5 by adding the following new subchapter:

SUBCHAPTER IX - SPECIAL OCCUPATIONAL SERVICES

- 5391. Definitions.
- 5392. Special Occupational Services.
- 5393. Job evaluation or alignment plans.
- 5394. Compensation plan.
- 5395. Annual report.
- 5396. Regulations.

The specific provisions of this subchapter are discussed next.

SUBCHAPTER IX. SPECIAL OCCUPATIONAL SERVICES

Definitions

Proposed new section 5391 provides definitions for the terms agency, employee, position, class, grade, and pay level.

Special Occupational Services

Proposed new section 5392 authorizes the Office of Personnel Management in consultation with the Office of Management and Budget to establish, combine, modify or abolish Special Occupational Services for specific occupations or groups of occupations for which the Office has determined the Government would be significantly handicapped in recruiting a well qualified workforce or in directing the efficient internal management of that workforce if the positions in those specific occupations were included under the General Schedule. It is not intended to include in a Special Occupational Service any position covered under any other pay system other than the General Schedule. In carrying out these functions the section provides that the Office consult with representatives of employee organizations which represent, in the case of labor organizations, or include in their membership, in the case of other organizations, substantial numbers of employees in the occupation or occupations to be included in the Special Occupational Service and consider their views and recommendations regarding the establishment, modification, or abolishment of such Service and any other matters considered to be appropriate by the Office.

Job evaluation or alignment plans

Proposed new section 5393 authorizes the Office of Personnel Management to establish job evaluation or job alignment plans, as appropriate, for the Special Occupational Services. As a result, classification systems for the Special Occupational Services may vary in concepts from traditional job evaluation plans (e.g., ranking, factor point evaluation, position classification), to rank-in-person schemes (e.g., the Senior Executive Service or the uniformed services) to functional considerations (e.g., research, program management, audit), depending on the needs of the Service.

Compensation Plan

The several subsections of the new section 5394 describe the practices and procedures to be followed to implement policy governing the pay of employees under the Special Occupational Services.

Subsection (a) directs that in addition to the total compensation policy outlined in section 5301 of this title the pay for each of the Special Occupational Services shall be fixed and from time to time adjusted consistent with the public interest and comparable with non-Federal pay for the same levels of work.

Subsection (b) directs that the Office of Personnel Management shall be responsible for establishing, administering and, when they are no longer needed, abolishing pay setting procedures in accordance with the purposes and policies in section 5301 of title 5. The procedures shall provide for:

- (1) definition of the boundaries of the pay area or areas determined by the Office to be appropriate for pay rate determination;
- (2) collection, analysis, and use of data which shall be provided by BLS or another source as determined to be appropriate by the Office;
- (3) agency participation as the Office deems appropriate;
- (4) periodic reviews of pay rates to insure adherence to total compensation policies; and
- (5) taking into account the difference in Federal and non-Federal benefit values in making adjustments, as directed by the President, in order to achieve total compensation comparability.

Subsection (c) of this section directs the Office to establish, adjust, and abolish pay schedules for each Special Occupational Service, as appropriate. Such pay schedules would have a rate or range of rates of basic pay for each grade or pay level.

Subsection (d) directs that each employee holding a position in a Special Occupational Service shall be paid from the appropriate schedule in accordance with provisions of subchapter IX of chapter 53 of title 5.

Subsection (e) directs each agency to identify those employees covered by a Special Occupational Service and to place each such employee in the appropriate grade or pay level in conformance with standards or instructions published by the Office. Agencies may change, when the facts warrant, positions from one pay level to another. These actions of an agency are the basis for pay and personnel transactions unless changed by certificate from the Office.

Subsection (f) directs that the Office shall establish the policies and procedures for fixing the rates to be paid employees upon appointment, transfer, change of grade or pay level, or other personnel action and, as appropriate, conditions under which employees shall advance through the range of each grade or pay level.

Subsection (g) of this section directs the Office to determine whether a Special Occupational Service's employees are entitled to overtime pay (or compensatory time off in lieu thereof), Sunday pay, holiday pay, standby or on-call pay, hazardous duty pay, or night differential pay. The Office is further directed to establish conditions under which such payments shall be made and the rates of such payments.

Annual Report

Proposed new section 5395 requires the Office to report annually the status of each Special Occupational Service to the President for transmittal to the Congress. This continues the present practice of providing an annual report to the President on the operation of the Federal white-collar pay systems.

Regulations

Proposed new section 5396 requires the Office to prescribe regulations to carry out the purpose of subchapter IX of chapter 53 of title 5.

Subsection (q) of section 2 amends the analysis of chapter 53 of title 5 to conform to the amendments made by section 2 of this bill.

Section 3. Prevailing Rate Systems Amendments

Subsection (a) of section 3 amends section 5343 of title 5 in subsection (a)(3) to conform to the amendments made by this section; in subsection (b) by substituting a requirement for full-scale wage surveys at least every third year instead of every second year as at present; in subsection (c) by striking out the reference in paragraph (1) to subsection (d) which is repealed by subsection (a)(6) of section 3 of the Act and eliminating the current restriction of wage surveys to private employers only (it will be proper under paragraph (1), as amended, for wages surveyed to include those paid by non-Federal activities outside of private industry to their regular full-time employees), by redesignating paragraphs (5) and (6) as paragraphs (6) and (7), respectively, and by inserting a new paragraph (5) requiring the Office of Personnel Management to issue regulations governing the development of proper differentials for work performed at night provided that the differentials under this paragraph shall be part of basic pay (this new paragraph incorporates the provisions of current subsection (f) except that specific hours and uniform night differentials will no longer be specified by statute); by repealing subsection (d) relating to the use of out-of-area data in wage surveys (the so-called Monroney Amendment, originally enacted as section 4 of Public Law 90-560, approved October 12, 1968); by repealing subsection (e) relating to the requirement that each grade of a regular nonsupervisory wage schedule have five steps and that the payline be fixed at the second step (section 5343(e) as amended by this bill, in effect, would require the Office of Personnel Management to issue regulations for the establishment of wage schedules, including payline structure); and by repealing subsection (f) relating to uniform 7.5 and 10 percent night differentials (paragraph (5) of subsection (c), as amended by this Act, requires the Office of Personnel Management to provide for night differentials by regulation).

Subsection (b) of section 3 provides that a prevailing rate employee will not lose pay as a consequence of the initial application of this legislation.

Subsection (c) of section 3 provides that an employee on such retained rate will receive one-half of each subsequent wage adjustment until he/she is entitled to a higher rate of pay by normal operation of the

wage system. It further provides that for each affected employee the first increase after enactment which results from a full-scale wage survey will not be reduced below three percent because of these amendments.

Subsection (d) of section 3 gives the Office of Personnel Management the authority to issue regulations implementing this section.

Section 4. Premium pay and allowances amendments

Subsection (a) of section 4 amends section 4109(a)(1) of title 5 to authorize the payment of premium pay to nonexempt employees when the period of training is by, in, or through a Government facility and the employee's attendance is directed by the agency.

Subsection (b) of section 4 amends the definition of "employee" in section 5541(2) of title 5 by adding prevailing rate nonappropriated fund employees defined in section 5342(a)(2)(B) of title 5; by adding a group of prevailing rate employees of the Office of the Architect of the Capitol who are paid on a daily or hourly basis and who are not subject to chapter 51; and by repealing subparagraph (xi), which excluded prevailing rate employees (Federal Wage System employees) from the definition of employee. This will serve to bring all prevailing rate employees, those employees paid from appropriated and nonappropriated funds (including prevailing rate employees of the Veterans Canteen Service), under the general provisions of this subchapter for their entitlement to, and computation for, overtime, Sunday and holiday pay. A companion proposal will repeal sections 5544 and 5550 of title 5 which currently prescribe Sunday and overtime pay for these employees. The repeal of section 5544 of title 5 will also eliminate their statutory entitlement to overtime pay for standby duty. However, they will continue to be entitled to the same level of overtime pay for standby duty under the general provisions of section 5542 of title 5. All prevailing rate employees will retain their entitlement to night differential and environmental differential under section 5343 of title 5. These amendments will extend statutory entitlement to holiday pay and call-back overtime pay to these prevailing rate employees for the first time. However, they have been receiving both holiday pay and call-back overtime pay under Commission regulatory authority (FPM Supplements 532-1 and 2) since the establishment of the Prevailing Rate System.

This subsection further amends section 5541(2) of title 5 by adding two new exclusions from the definition of "employee." The exclusion of employees who are covered by Special Occupational Services established under the proposed subchapter IX of chapter 53, in conjunction with proposed section 5394(g) of title 5, will permit the Office of Personnel Management to establish premium pay for each such Special Occupational Service. The exclusion of special project employees from the statutory

provisions governing pay under the General Schedule and the prevailing wage schedules and from the usual provisions relating to hours of work and premium pay will permit the Office of Personnel Management to issue regulations governing premium pay of these employees. This subsection further amends section 5541 of title 5 by adding five new definitions. The definitions of "exempt employee" and "nonexempt employee" have been added for the purpose of dividing the Federal workforce into these categories based on the exemptions (primarily the executive, administrative, and professional exemptions) contained in section 13 of the Fair Labor Standards Act of 1938, as amended. All employees will be entitled to overtime pay under section 5542 of title 5 based on their exemption status under the FLSA. The definition for "hours of work" has been added to include the concept of suffered or permitted work as stated by the FLSA and also to include paid absences from duty. The definition for "hourly regular rate of pay" has been added to establish the rate of pay to be used in computing overtime compensation for nonexempt employees under this subchapter. The rate of overtime pay for nonexempt employees under title 5 will then parallel that used under the FLSA. The definition of "total remuneration" has been added to establish those elements of pay which shall be included or excluded in determining a nonexempt employee's hourly regular rate of pay. These definitions will serve to clearly establish the amount of overtime compensation due nonexempt employees governed by this subchapter. It should be noted that exempt employees will continue to be paid for "officially ordered or approved" overtime work at a rate of one and one-half times their hourly basic rate of pay (see the discussion under subsection (c) below).

Subsection (c) of section 4 amends section 5542(a) of title 5 to clarify the definition of overtime work for full-time, part-time, and intermittent employees. For a full-time employee, hours of work outside the employee's 40-hour basic workweek as defined in section 6101(a) of title 5 and which exceed 40 hours in an administrative workweek are overtime work. Thus, work performed by full-time employees during their basic 40-hour workweek is considered nonovertime work and work performed by employees outside their basic 40-hour workweek is overtime work. When an employee's basic workweek includes Sunday or holiday work, the employee shall be entitled to the appropriate premium pay for these premium hours under section 5546(a) or (b) of title 5. However, when an employee performs overtime work on these days, the employee shall be entitled to overtime pay under this section. For a part-time employee, the hours of work must be outside the employee's scheduled tour of duty and exceed 40 hours in an administrative workweek to be considered overtime work. For an intermittent employee, hours of work in excess of 40 hours in an administrative workweek are overtime work. This amendment also deletes the reference to work in excess of 8 hours in a day as overtime work and permits title 5 to parallel the FLSA in clearly establishing that work in excess of 40 hours in an administrative workweek is overtime work. This subsection further amends section 5542(a) of title 5 by establishing the rates of pay for overtime work. Exempt employees will continue to be paid for officially ordered or approved overtime work at a rate of one and one-half times their hourly basic rate of pay (limited to the overtime

rate of pay of GS-10-1, for General Schedule employees). Nonexempt employees are to be paid for overtime work at a rate of one and one-half times their hourly regular rate of pay. This is the same rate of pay prescribed by the FLSA. This will eliminate their entitlement to overtime pay at two different rates under two laws and the need to make dual computations to determine which law provides them the greater overtime pay entitlement. This proposed amendment, in conjunction with other proposed amendments to sections 5541, 5544, and 5550 of title 5 will provide overtime benefits for nonexempt Federal employees under title 5 equal to or greater than those provided by the FLSA. This subsection further amends section 5542(b)(2) of title 5 to add the FLSA conditions for when time spent in a travel status away from the official duty station is hours of work for nonexempt employees. These employees will be paid for travel time consistent with the FLSA. The existing title 5 conditions for compensable travel time are retained for application to exempt employees only.

Subsection (d) of section 4 amends section 5543 of title 5 to ensure that an agency cannot direct its nonexempt employees to take compensatory time off in lieu of overtime pay. However, an agency may continue to direct its exempt employees to use compensatory time off. On the other hand, all employees, exempt or nonexempt, may continue to request compensatory time off instead of overtime pay. This provision for nonexempt employees to request compensatory time off is retained in title 5 on the premise that their overtime pay entitlement in this subchapter will be equal to or greater than their overtime pay entitlement under the FLSA in all cases. It must be reiterated that the decision by a nonexempt employee to use compensatory time off, hour for hour, in lieu of overtime pay provided under section 5542 of title 5 must be truly voluntary. Furthermore, if at a later date a nonexempt employee cannot take the compensatory time off, for whatever reason, the employee will be paid for such time at the appropriate overtime rate under section 5542 of title 5. This subsection will extend the compensatory time off provision to prevailing rate employees. It is also intended that compensatory time off may not be granted for the value of overtime work which exceeds the limitation on premium pay imposed by section 5547 of title 5.

This subsection further repeals the authority of the Architect of the Capitol to grant (to direct) any of its employees compensatory time off. Since nonexempt employees cannot be directed to use compensatory time off, the authority of the Architect of the Capitol is no different than other Federal agencies. The Architect of the Capitol may continue to grant its employees compensatory time off under the general provisions of section 5543 of title 5.

Subsection (e) of section 4 amends subchapter V of chapter 55 of title 5 by repealing section 5544 of title 5 pertaining to pay for overtime and Sunday work by wage-board employees. By the amendments to section 5541

of title 5, these employees are to be included under the general premium pay provisions of this subchapter for overtime and Sunday work.

Subsection (f) of section 4 amends section 5545 of title 5 to eliminate the parenthetical statement in subsection 5545(c)(1) of this title which refers to a position described in section 5542(a)(3). The special overtime rate of pay for employees in these positions is no longer necessary since section 5542(a) of title 5 is being amended to include all Federal employees and to pay them for overtime work based on their exemption status under the FLSA. Section 5545(c) of title 5 is not being otherwise amended at this time. Thus, the conditions and rates of pay for standby duty and administratively uncontrollable (overtime) work contained in this section will continue to apply to all employees (exempt and nonexempt employees). For nonexempt employees, in addition to annual premium pay under this section, they will continue to be entitled to additional overtime pay (computed at one-half times their regular rate of pay) for excess hours under the FLSA.

This subsection further amends section 5545 of title 5 by excluding prevailing rate employees as defined by paragraph (2) of section 5342(a) of title 5 from the provisions of section 5545 of title 5. Such employees already have statutory entitlement to night differential and environmental differential under section 5343 of title 5 and are not currently paid on an annual premium pay basis under this section.

Subsection (g) of section 4 amends section 5546(a) of title 5 to limit premium pay for Sunday work to (1) the actual number of nonovertime hours worked on Sunday, or (2) one period of service, whichever is greater. This will eliminate an employee's entitlement to Sunday pay for two shifts, a part of each being performed on Sunday (e.g., 8:00 p.m. Saturday to 4:00 a.m. Sunday, and 8:00 p.m. Sunday to 4:00 a.m. Monday).

Subsection (h) of section 4 amends section 5547 of title 5 by restricting the limit on aggregate pay (basic pay and premium pay) only to exempt employees. This removes the maximum earnings limitation for nonexempt employees and thereby parallels the FLSA. This section continues to apply only to General Schedule employees and does not limit the aggregate pay of exempt Federal Wage System or nonappropriated fund employees.

Subsection (i) of section 4 is a technical amendment to section 5548 of title 5 to delete the reference to section 5550 of title 5 which is being repealed.

Subsection (j) of section 4 amends subchapter V of chapter 55 of title 5 by repealing section 5550 of title 5 pertaining to pay for overtime and Sunday work for prevailing rate nonappropriated fund employees defined in section 5342(a)(2)(B) of title 5. By amendment to section 5541 of title 5, such employees are to be included under the general premium pay provisions of this subchapter for overtime and Sunday work.

Subsection (k) of section 4 amends section 5596(b)(1) of chapter 55 of title 5 to provide for back pay when a employee is subject to an unjustified or unwarranted personnel action.

Subsection (l) of section 4 repeals section 5941 of title 5 relating to the payment of non-foreign allowances based on living costs and conditions of environment. Such factors as the cost-of-living will be accounted for in the local pay data from which local General Schedule and Special Occupational Services (local) pay rates will be determined.

Subsection (m) of section 4 amends chapter 59 by adding a new section "5949. Staffing differentials" after section 5948. Section 5949 provides for the establishment of staffing differentials which would be in addition to base pay. These differentials would be established where warranted to enable the Government to offer additional compensation in order to overcome significant staffing problems involving recruiting or retaining well-qualified individuals with required skills and qualifications. Differentials may be established for a single position or groups of positions on either a limited or broad geographic basis as warranted based on the facts and circumstances contributing to the staffing handicap. Various payment methods would include one-time and periodic payments and may require service agreements. Aggregate pay of the differential in combination with basic pay would be limited to 125 percent of the payable rate at GS-18. Eligible employees include General Schedule, Foreign Service, and the Department of Medicine and Surgery employees. Excluded would be pay systems for the Senior Executive Service, the Central Intelligence Agency, and the United States Postal Service where other pay flexibility already exists.

Section 5949 would combine current pay flexibilities into one section of law (with the repeal of section 5303 and pertinent parts of section 5333(a) of this title) in order to have the authority to set differentials and payment methods which could be related to varying kinds of staffing problems and to avoid a patchwork of narrow flexibilities. Each authorization made would be reviewed periodically to determine whether the differential should be adjusted or abolished. Because of the repeal of section 5303, section 5363(a)(2) is also repealed to eliminate a pay saving provision necessitated by section 5303.

Subsection (n) of section 4 amends the analysis of chapter 59 to provide for a new section 5949 as provided for in subsection (m) of section 4.

Subsection (a) of section 5 amends section 6101(a)(1) of title 5, to use the same definitions of "agency" and "employee" that are being used for the administration of premium pay under subchapter V of chapter 55 of title 5. Thus, the same agencies and employees will be covered by this section for work scheduling purposes. Additionally this subsection amends section 6101(a)(2)(A) to change the phrase "basic administrative workweek" to read

"basic workweek". Throughout regulation and guidance the terms "administrative workweek" and "basic workweek" are defined and used distinctly. The term "basic administrative workweek" has created confusion by appearing to combine both these terms. In reality the term has the same meaning as "basic workweek," i.e., 40 hours of duty for each fulltime employee. By making the terms in law and regulation consistent, the confusion should be eliminated. This subsection further repeals section 6101(a)(3)(D) to provide conformity with section 5542(a) of title 5; amends section 6101(a)(5) to make it applicable to employees of the judicial branch, if determined to be appropriate by the Administrative Office of the United States Court; and repeals section 6101(b)(1) which is no longer necessary since section 6101(a)(1) now defines those employees covered by this section.

Subsections (b), (c), and (d) of section 5 repeal sections 6103, 6104, and 6105 of title 5. These sections are being moved to chapter 63 of title 5 because the subject matter of these sections (holidays, closures, and dismissals) concerns hours in which employees are not at work. These subjects are more closely related to the subjects of chapter 63 which is being retitled "Leave and Other Absences." Chapter 61 will continue to cover subjects concerned with basic workweeks and scheduling of work.

Subsection (e) of section 5 provides for the addition of new section 6327, 6328, 6329, and 6330 of title 5. Section 6327 replaces repealed sections 6103 and 6104 with some modification. Section 6327(a) replaces repealed section 6103(a) listing legal public holidays. To the former list of holidays has been added a proposed holiday for January 15. The establishment of this national holiday would honor the memory of Dr. Martin Luther King, Jr. on his birthday. Section 6327(b) clarifies the determination of "in-lieu-of" holidays when the legal public holiday falls on an employee's scheduled nonworkday. The modification provides for celebrating the holiday on the workday which is closest to the actual day of the holiday. The employee coverage for purposes of entitlement to "in-lieu-of" holidays has been expanded to include any employee including a part-time employee, who has a scheduled tour of duty of five consecutive workdays. The Comptroller General previously ruled that part-time employees received holidays only if they fall on the part-time employees' scheduled workdays. This resulted from title 5 basing entitlement to "in-lieu-of" holidays on employees with a basic workweek as defined by law, which implies 40 hours of work or full-time status. This change corrects the situation of a holiday falling on the nonworkday of full-time and part-time employees who normally receive a workday off but the part-time employees do not. The Office of Personnel Management shall regulate the determination of the "in-lieu-of" holiday for employees whose scheduled tour of duty is not covered by the specific language of this section.

Section 6327(c) incorporates into law the provisions of Executive Order 11582 dealing primarily with the observance of holidays by first-40-hours-of-duty employees. Section 6327(d) and (e) provide additional provisions presently found in E.O. 11582 not limited to first-40-hours-of-duty employees. The section of the Order dealing with the Postal Service was deleted because of overriding provisions of the Postal Reorganization Act. Section 6327(f) has modified repealed section 6103 solely to clarify entitlement to a legal public holiday for employees in Washington, DC, the Adjoining counties, and incorporated cities contained in these counties who are scheduled to work on Inauguration Day. This is to be accomplished by adding specific language which restricts entitlements to employees who are scheduled to perform work on that day. This modification is consistent with Congressional intent at the time of passage and the subsequent rulings of the Comptroller General. Section 6327(g) replaces and modifies repealed section 6104. The modification extends the coverage from employees paid at a daily or hourly, or on a piecework basis, to all employees who have both a scheduled tour of duty and appointments not limited to 90 days or less. Section 6327(h) provides a statutory basis for the closing of an activity or a portion of an activity which relieves or prevents employees from working by administrative order as provided by Executive Order 10552. These closings are limited to circumstances which management determines do not allow the normal performance of work because of forces or events outside the control of management or affected employees, e.g., a breakdown of essential building services, hazardous weather, etc. These provisions codify the guidance presently found in the Federal Personnel Manual which was based on Comptroller General decisions spanning many years. Section 6327(i) bars the closing of an agency by the head of an agency in memory of a deceased former official of the United States.

Section 6328 provides a statutory basis within title 5 for excusing Federal employees from duty without a change to leave in accordance with regulations prescribed by the Office of Personnel Management and designates such absences as administrative leave. It provides for short periods of absence for circumstances such as blood donations, voting and tardiness. It also provides for extended periods of administrative leave for unique circumstances, as approved by the Office of Personnel Management or governed by OPM published criteria, such as time necessary for investigating allegations of misconduct against employees when there is insufficient evidence to warrant initiation of an adverse action against them and there are no other feasible alternatives. Lastly, it provides for periods of dismissal by administrative order in section 6327(h). Section 6329 allows the Office of Personnel Management to prescribe regulations and generally administer leave and absences under subchapter II of chapter 63, e.g., court leave, funeral leave, military leave, etc. Section 6330 authorizes the Office of Personnel Management to provide for and/or regulate periods of nonduty status, e.g., leave without pay and absence without leave, when it is considered necessary to promote the efficiency of the service. Presently there is no general legislative or regulatory authority in these areas which result in large amounts of

nonproductive time and hidden costs, i.e., coverage for certain employees benefits without employee contribution, increased staff to cover these absences, etc. This provisions would allow OPM to establish uniform guidelines resulting in more control of these absences.

Subsection (f) of section 5 amends the catchline of chapter 63 and the heading of subchapter II of chapter 63. It also replaces the term "basic administrative workweek" in section 6302(b) with the term "scheduled tour of duty." The former term is being replaced to alleviate confusion with similar terms "basic workweek" and "administrative workweek" as used in regulations and guidance. "Scheduled tour of duty" was chosen as a term which will include both full-time and part-time employees as long as they have a prescribed schedule for working. Lastly, it repeals section 6322(c) which is being provided for generally in the new section 6329.

Subsection (g) of section 5 amends the analysis of chapter 61 by striking out the repealed sections 6103, 6104, and 6105.

Subsection (h) of section 5 amends the analysis of chapter 63 to provide for the new sections 6327, 6328, 6329, and 6330 as provided for in subsection (e) of section 5.

Section 6. Premium Pay and Allowances Special Authority

Subsection (a) of section 6 amends subpart D of Part III of title 5 by adding a new chapter 50 which gives the President the authority to establish, modify or abolish Federal executive branch premium pay and non-foreign overseas allowance provisions. Those relating to employment in foreign areas would not be affected. The President may adjust these provisions in order to eliminate conflicting or contradictory requirements, provide for adjustment of Federal provisions in light of the non-Federal practices, or provide for equitable premium compensation to all Federal employees working under similar circumstances.

Subsection (b) of section 6 amends the table of chapters at the beginning of Part III of title 5 by adding "Chapter 50 - Special Authority."

Section 7. Technical and Conforming Amendments

Section 7 amends section 2105(c)(1) of title 5 by striking out reference to section 5550 since it is repealed by this Act and putting in its place reference to chapter 61 having to do with hours of work and subchapter V of chapter 55 and chapter 50 having to do with premium pay; amends section 2301(b)(3) by striking out "private" and inserting in lieu thereof "non-Federal"; amends section 5102(c) of title 5 by striking the word "or" at the end of paragraph (26); by adding the word "or" at the end of paragraph (27); and by exempting "special project employees" from the statutory provisions governing pay under the General Schedule and

the Prevailing Rate Systems and from the usual provisions relating to hours of work and premium pay. The amendments provide the statutory authority, now lacking, to clarify the Office of Personnel Management's role in such programs as the President's Stay-in-School Campaign; amend section 5402(a) relating to the merit pay system by providing that the grades to which the system apply refers to each such grade under each General Schedule local pay schedule established under chapter 53 of title 5 and that pay may not be paid at a rate in excess of basic pay for level V of the Executive Schedule; and amend section 5504 by striking out basic administrative workweek and substituting basic workweek.

Section 8. Pay and Benefits Saving

Subsection (a) of section 8 specifies that the Office of Personnel Management shall prescribe regulations providing indefinite pay retention, and one half of the amount of each subsequent increase in the maximum rate of the grade to which assigned until the retained rate is equalled or exceeded by the maximum rate of the grade to which assigned, for employees whose pay would be reduced by reason of the initial application of the provisions of this Act.

Subsection (b) of section 8 specifies that any change in classification and pay resulting from the initial implementation of the provisions of this Act will not be construed as adverse actions as defined in chapter 75 of title 5.

Subsection (c) of section 8 provides that there shall be no downward adjustment of benefit provisions during the first five years following the date of enactment.

Subsection (d) of section 8 protects the pay of special project employees on the rolls on the effective date of this Act.

Subsection (e) of section 8 provides for a gradual phase out of the additional compensation paid under section 5941 of title 5 (which is being repealed) which would not be offset by other provisions of this Act or actions of the U.S. Postal Service.

Section 9. Effective Date

Subsection (a) of section 9 provides that, with the exception of the amendments to the Prevailing Rate Systems in section 3, the provisions of the Act will be placed into effect at such times as the President may direct within a 5-year period following the date of enactment. It is felt that two years is the amount of time needed to fully develop the regulations in order to begin implementing total compensation comparability and an additional period of three years would be needed to phase in the local pay schedules due to the workload requirements of collecting and evaluating pay data for approximately 150 pay areas. Other provisions of the Act would be made effective after a reasonable period of time for the development of implementing regulations.

Subsection (b) of section 9 specifies effective dates for the provisions of section 3 of this legislation. It also specifies that a full-scale wage survey shall be conducted in each individual wage area within one year after enactment. With the next full scale survey ordered after October 1, 1979, the Monroney Amendment will be eliminated; the requirement that regular non-supervisory wage schedules have five step rates with the payline set at step two, and four percent increments between steps, will be eliminated; and the requirement for uniform 7.5 percent and 10 percent night differentials and the limitation of survey coverage to private establishments will be eliminated. Effective October 1, 1979, the requirement that full-scale surveys be conducted every two years will be changed to every three years.

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Approved For Release 2002/05/02 : CIA-RDP81-00314R000600010002-8

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Assistant Legislative Counsel

EXTENSION

6126

NO.

DATE

4 June 1979

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OP 1006 Ames Building

Per your request three copies of the latest draft Classification and Compensation Act are herewith attached. We are meeting this morning with Madeleine Albright of the NSC Staff. Should have some further information for you this afternoon at the OPM auditorium. See you there.

5.

6.

Attachments as stated

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